

***United States Court of Appeals
for the Second Circuit***



APPENDIX

76-1300

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Docket No. 76-1300

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United States Court of Appeals

For the Second Circuit

UNITED STATES OF AMERICA

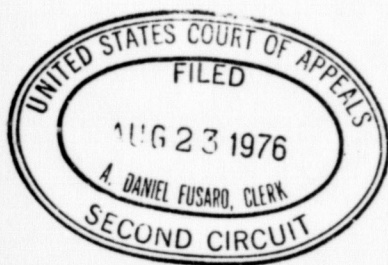
Plaintiff-Appellee,

V.

DELIA AGUILAR SAN JUAN

Defendant-Appellant

**APPENDIX TO BRIEF
FOR DEFENDANT—APPELLANT**



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United States District Court
District of Vermont
HON. ALBERT W. COFFRIN, District Judge

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6-21-76	Judgment and Probation/Commit- ment Order
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A.1

Indictment

UNITED STATES OF AMERICA

v.

DELIA AGUILAR SAN JUAN

18 U.S.C. §§1058, 1101

The Grand Jury charges:

On or about March 30, 1975, at Highgate Springs, in the District of Vermont, DELIA AGUILAR SAN JUAN, the defendant, unlawfully, willfully and knowingly did transport and cause to be transported into the District of Vermont from Canada monetary instruments in the approximate amount of \$77,500 and did fail to file a report in accordance with Title 31, United States Code, §1101(b); in violation of Title 31, United States Code, §§1058 and 1101(a).

A TRUE BILL

/s/ William W. Stark

Foreman

GEORGE W. F. COOK
United States Attorney

By: _____

DAVID A. REED
Assistant U. S. Attorney

June 26, 1975

Motion To Dismiss Indictment

UNITED STATES DISTRICT COURT

DISTRICT OF VERMONT

UNITED STATES OF AMERICA

vs.

DELIA AGUILAR SAN JUAN

Criminal No. 75-46

MOTION TO DISMISS THE INDICTMENT

The defendant moves to dismiss the indictment herein on the ground that it does not state facts sufficient to constitute an offense against the United States in that Title 31 U.S.C. §§1051-1122, known as the "Currency and Foreign Transactions Reporting Act", and in particular §1101(b), and §§1058 and 1101(a) thereof set forth in the indictment are not self-executing and the criminal penalties under §1058 attach only upon violation of regulations promulgated by the Secretary of the Treasury pursuant to Section 1053 of the Act none of which regulations are alleged in the indictment.

2. Said indictment does not set forth the essential elements of the offense sought to be charged as required by Fed. R. Crim. P.7c.

3. Said indictment does not allege that the defendant "willfully" violated Section 1101(a) as specifically required by the statute.

Dated: August 13, 1975

**Motion To Dismiss Indictment
On Constitutional Grounds**

**UNITED STATES DISTRICT COURT
DISTRICT OF VERMONT**

UNITED STATES OF AMERICA

vs.

DELIA AGUILAR SAN JUAN

Criminal No. 75-46

MOTION TO DISMISS

The defendant moves to dismiss the indictment on the ground that Sections 1101(a) and 1101(b) are unconstitutional in that they violate the defendant's Fifth Amendment right against self incrimination and her right to due process; her right under the Fourth Amendment against unreasonable search and seizures; her right to privacy under the First and Fourth Amendments; and her right under the Sixth Amendment to be informed of the nature and cause of the accusations against her.

Dated: August 13, 1975

Information

UNITED STATES DISTRICT COURT

DISTRICT OF VERMONT

UNITED STATES OF AMERICA

v.

DELIA AGUILAR SAN JUAN

Criminal No. 75-46

31 U.S.C. §§ 1058, 1101

31 C.F.R. §§ 103.23(a),
103.25(b)

The United States Attorney charges:

On or about the 30th day of March, 1975, at Highgate Springs, in the District of Vermont, DELIA AGUILAR SAN JUAN, the defendant, unlawfully, willfully and knowingly did transport and cause to be transported into the District of Vermont from Canada monetary instruments in the approximate amount of \$77,500 and did willfully fail to file a report in accordance with Title 31, United States Code, §§1101(b); in violation of Title 31, United States Code, §§1058 and 1101(a); and 31 C.F.R. §§103.23(a) and 103.25(b).

UNITED STATES OF AMERICA
GEORGE W. F. COOK
United States Attorney

By: /s/ DAVID A. REED
David A. Reed
Assistant U. S. Attorney

The allegations in the foregoing Information are true to the best of my knowledge and belief.

/s/ DAVID A. REED

David A. Reed
Assistant U. S. Attorney

Subscribed and sworn to before me, this 22nd day of October, 1975.

/s/ MARY A. O'ROURKE

MARY A. O'ROURKE,
Notary public

My commission expires 2/10/79

**Defendant's Motion To Suppress And Return
Monetary Instruments And Other Documents**

UNITED STATES DISTRICT COURT

DISTRICT OF VERMONT

UNITED STATES OF AMERICA

vs.

DELIA AGUILAR SAN JUAN

Criminal No. 75-46

**MOTION TO SUPPRESS AND RETURN
MONETARY INSTRUMENTS
AND OTHER DOCUMENTS**

The defendant moves for the suppression as evidence and the return to the defendant of monetary instruments in the amount of \$77,500 seized from the defendant by the Government on March 30, 1975, and the suppression and return to the defendant of all documents, letters and other memoranda seized from the defendant at the same time on the ground that said seizures were in violation of the rights of the defendant under the Fourth Amendment to the Constitution of the United States in that:

1. The search of the defendant on March 30, 1975 was unreasonable and unlawful because it was a suspicionless search by Customs agents of the United States;

2. The seizure of said currency and documents was unreasonable and unlawful since at the time seizure thereof was made by said agents the currency and documents were neither contraband nor dutiable;

Motion To Suppress

3. Said currency and documents were lawfully in the United States and the defendant was not required after said seizure to report said currency under Section 1101 of the Bank Secrecy Act and regulations issued pursuant thereto (31 C.F.R. 103.23(a) and 103.25(b); and

4. Said currency could only be lawfully seized, if at all, under Section 1102(a) of said Act after the defendant failed to file any report required by said Act and regulations pursuant thereto.

Dated: October 25, 1975

Defendant's Motion to Suppress

Robert M. Johnson, Sworn
Government's Direct Examination

* * *

[29] Q (By Mr. Reed) Please state your name, sir.

A. Robert M. Johnson.

Q How are you employed?

A. United States Customs inspector stationed at Highgate Springs, Vermont.

Q How long have you been with Customs?

A. A little over thirteen years now.

Q. So is that all your time here in Vermont?

A. Yes.

Q I ask you to recall the date of March 30th of this year and ask if you had occasion to perform an inspection on a woman that came to be known to you as Delia San Juan?

A. Yes. On that day, I was working 9:00 to 5:00 at High- [30] gate Springs, and it was our week to work the buses; by that, I mean immigration does that some time, and we do the other week. I went out to the bus; there was only a few passengers on the Greyhound Bus-Vermont Transit Bus, and on entering the bus, Mrs. San Juan was sitting either in the first or second seat on the left hand side, as I faced the bus. I asked her citizenship; she presented a United States Passport; she said she had been in Canada for a couple of days, was returning home with only a couple of small gifts for her children--candy, I believe it was, or something like that.

Johnson—Direct Examination

Q Was she carrying any kind of luggage or baggage with her?

A. She had one piece of luggage up above her in the baggage rack. I asked her to look at her baggage and took it down for her. She unlocked it, opened it up, and I looked in and there was some woman's clothing and so on, and she moved the items around, and in the bottom was a couple of packages

Q What were these packages packaged in?

A. Brown wrapper, or brown envelopes.

Q Did you ask Mrs. San Juan what was contained in these brown packages?

A. I did. She said it was her books, and she was with the University of Connecticut at Storrs. Again, she moved the clothes around. I didn't ever did see the [31] candy, but I am sure it was there some place.

Q Would it be fair to say, did you ask to see what was in the brown bags?

A. Not at that time, no.

Q What happened then?

A. I felt I should, perhaps, go a little further, but because of the fact it was a woman on a bus with woman's clothing and people hanging around the seats, it is not the pleasantest thing to be examining packages on a bus. Our usual procedure on handling buses, a bus with a lot of passengers is to give the passenger a slip of paper asking them to take their baggage inside and examine it inside, and in this case there was only well, I'll say seven or eight people on the bus, so I figured I might as well

Johnson—Direct Examination

wait and go in myself with the person. I completed the bus and came back to Mrs. San Juan.

Q You mentioned your procedures requesting someone to go inside. Is that called a secondary search?

A. That is right, a secondary examination.

Q Is it a fair statement, Mr. Johnson, that you perform secondary examinations upon people that you have some suspicion regarding either what they are bringing with them, or their nationality?

A. Nationality part would be, of course, for the immigration. We also do dual inspection on the bus and to examine [32] for immigration, and we also do examination for customs, and, yes, a secondary examination might be either immigration or customs. In this particular case, the young lady presented a United States Passport. There was no questions as to immigration; it was just customs.

Q Would it be fair to say you were suspicious of the contents of her bag? Is that the reason you had her come in for the secondary search?

A. I wanted to see what the contents of the packages were.

Q Go ahead and continue to relate the facts, as you recall them.

A. I believe I said I finished the bus. There were only several people on the bus. I came back and picked up Mrs. San Juan's bag from the baggage rack above, asked her to come inside, which she did. She became quite nervous.

Johnson—Direct Examination

I tried to calm her down, it was nothing, just a simple secondary examination of the baggage, that is all we wanted to see what the baggage contained. We went inside, and I put her bag on the counter, and she became quite nervous, and I opened up the bag and to look in there further. I saw the candy, and I saw the box of candy, a gift she mentioned. I took out one package. At that point, Inspector McClatchey, standing in back of the counter, came over to help. We tried to go as quick as we could to get the people going. I passed one package [33] over, in the shape of a large brown envelope, to Inspector McClatchey, and I took the other package out and set it on the counter. I set that package on the counter at about that time, considering looking at the package to see what other items were in there. There appeared nothing other than clothing, things for a woman's hair and so on. At that point, Inspector McClatchey opened up one envelope and saw it appeared to be a letter, and at that point Mrs. San Juan turned the package around, the larger package of the two, and made the remark, "Oh my God, no," and at that point I don't know what was in the package. I had no idea. I certainly didn't expect what I found. By that time, I was on the inside of the counter also. I turned the package around; inside appeared to be a considerable amount of money. I had no way of knowing; it was just a large, several packages of American money in a bag-envelope type thing. So I told Inspector McClatchey that was as far as we should go. The Port Director at that time was Bob Scott, and he was on duty at that time, so I told Joan the best thing to do was turn it over to the Port Director, which we did; the two packages.

Johnson—Direct Examination

Q Now you mentioned, Mr. Johnson, there seemed to be a large amount of money. Did you see the denomination of the bills?

A. One hundred dollar bills. Whether they were all one hundred dollar bills, I didn't look at it long enough to [34] determine.

Q Would it be fair, did you estimate there was probably over \$5,000?

A. I would certainly say, yes. There were several packages, normal packages, and there must have been at least a dozen. There were a lot of them; certainly, over \$5,000, I would say. That is only fifty bills.

Q Pardon?

A. That is only fifty bills, I believe.

Q And, did you observe more than fifty bills?

A. I would certainly say there were many more than fifty, yes, sir, assuming they were all \$100 bills, which I believe they were.

Q You testified, I believe, you then handed this money over to a Mr. Scott, is that correct?

A. Yes. We turned both packages over to Port Director Scott.

Q To your personal recollection, what then happened?

A. At that time at that point, Mrs. San Juan was very upset. We tried to calm her down and told her she was not under arrest. She felt she was going to be, well abused, beat up, whatever, manhandled, and so on. We told her she certainly wouldn't as long as we were there, and we read her her rights and told her she

Johnson—Direct Examination

should understand the Miranda Warnings so she could understand she did not [35] have to answer any questions and wanted to be very sure she understood that. She wanted to sit down, so in the back of the counter we have two rooms; one is the supervisor's office and one an inspector's room. We took her to the inspector's room so she could sit down and relax a little bit and calm herself.

Q Is it part of your duties, Mr. Johnson, to present forms upon which a person would make a declaration of money in excess of \$5,000?

A. We have the forms in the office if the person wasn't aware of the reporting requirement, which I am sure many people aren't. In her case, we felt perhaps she wasn't. She was quite upset. So I went and got the forms out of our file cabinet and asked her if she wished to complete them. I offered to help her, if I could, if she would let me and gave her a pen and she was sitting at the desk at the time, and asked her if she wished to fill them out we would be glad to help her, and she declined and didn't wish to do it at that time.

Q Did there come a time, closely subsequent, that you gave her another opportunity to fill these out, to your knowledge?

A. I don't remember myself doing it, no. I did it that one time shortly after we went into the back room with Inspector McClatchey and Mrs. San Juan, and I asked her [36] if she wished to make out the forms. I don't remember doing it at a later date, although in the course of the conversation, maybe the next hour or two in going to see if everything was all right,

Johnson—Direct Examination

I might have asked her if she had changed her mind, or something.

Q When you said "if everything was all right," are you referring to the defendant?

A. Yes, so that she wouldn't have to be sitting in a strange room alone, Inspector McClatchey was going to stay with her to talk to her to see if she could calm her down. We thought it would be better for another woman to stay with her, certainly, and I went back about my work. We had plenty of work to do at the time, and I would go to see if Joan, or Inspector McClatchey, wanted a break or wanted a cup of coffee or we could get something for Mrs. San Juan, a glass of water, or coffee, or whatever. That is what I meant by "they," Inspector McClatchey and Mrs. San Juan, in the inspector's room.

Q From your recollection, is that the entirety of your personal activity in this matter on the evening in question, or the day in question? Did you see Mrs. San Juan again?

A. I saw her during the course of the day when she was there and saw her when she was leaving, and said "Goodbye" to her.

MR. REED. That is all we have.

Johnson Cross Examination

[37] Q (By Mr. Gruber) Mr. Johnson, what time did you first see Mrs. San Juan that day? The hour.

A. Well, the bus came in--I may be off a few minutes--but around 9:15-9:20, something like that. We usually wait for the bus driver to come in to sign the book to make sure we have passengers. So at a guess, I would say perhaps 9:20 or so, 9:25 by the time I got out to the bus.

Q Did you make a report of that occurrence?

A. I most certainly did to the port director.

Q Do you have a copy?

A. Is it Mr. Gruber?

Q Yes.

A. Yes, Mr. Gruber, I did at that time to the port director.

Q Is it a written report?

A. A typed report I made, yes.

Q Do you have a copy with you?

A. I certainly do.

Q Would you look at it and see if it reflects the time more exactly than you have just testified to?

A. Certainly will. The heading is "Examination of Vermont Transit Bus Number 15, which was at Highgate Springs; 9:15". It certainly came, arrived at 9:15 or at 9:10. It might take somewhere from five to ten minutes before [38] the inspector went on the bus. We look at the baggage underneath and check it and take the numbers of pieces of baggage underneath the bus. We have to check that.

Johnson—Cross Examination

Q Do you know where the bus was coming from?

A. From Montreal; it was the Montreal bus.

Q Do you know how long it takes to go from Montreal to Highgate Springs?

A. At a guess, Mr. Gruber, I would say perhaps an hour. It was perhaps 55 miles. I don't know whether they make stops or not. If they did, it might be at St. Johns or some such thing.

Q Very well. What time did Mrs. San Juan leave the customs area after her interrogation?

A. When the interrogation was done?

Q Yes.

A. We have a bus that comes in---

Q No, no. Do you know what time she left?

A. I am trying to bring it into perspective; it is seven months ago. I would say, 3:30 in the afternoon. She left on another bus that had come from Montreal and on its way south.

Q Are you suggesting---

A. I believe that is it; I believe so.

Q Do you know how much before 3:30 your questions of her terminated?

[39] A. No. My questioning, of course, was done within ten or fifteen minutes after we first went inside the office, but I would say, perhaps, the customs agent and whoever did talk to her at that time, after I had talked with her a few minutes--I can't give you an exact time, sir--I would, at a guess, say two o'clock. I don't know for sure. I certainly didn't keep track of it myself.

Johnson—Cross Examination

Q Your best estimate then is that Mrs. San Juan was in the customs office from about 9:15 in the morning until about 2:00 or so in the afternoon? That is your best estimate?

A. During the time she was probably being talked to, or waiting, or thinking, checking or something, but she was in the office until the bus came, I would say at a guess, 3:30 in the afternoon.

Q Yes, but what I was particularly referring to was that the investigation---

A. I see.

Q Again, in your opinion, as best as you can estimate, it took from about 9:15 to about two o'clock in the afternoon?

A. I'd say so, sir.

Q Now you say, "Joan"---

A. Inspector McClatchey.

Q How do you spell that?

A. M-c-C-l-a-t-c-h-e-y; McClatchey.

Q She was present when you were interrogating Mrs. San Juan, [40] is that right?

A. Inspector McClatchey was with her, yes, when I was talking to Mrs. San Juan about the money and where she got it, and so forth. Yes.

Q And then did an inspector-agent come to talk to Mrs. San Juan?

A. The inspector-agent was called by the port director, and he came. I don't know how long it took, sir. I will say within an hour or somewhere thereabouts; probably 9:30 he arrived--

Johnson — Cross Examination

10:00 or 10:30, I would guess, but I am not sure.

Q Do you know when he left?

A. I would assume that the time it took to complete everything with Mrs. San Juan was two o'clock. I assume he left about that time. He had nothing else to do there beyond that, I don't think.

Q And all that time; that is, between 9:15 and approximately two o'clock, either you--correct me if I am wrong--either you or Inspector McClatchey or the other inspector, or agent, were talking to Mrs. San Juan about the money and where it came from and so forth, is that correct?

A. Mr. Gruber, the only thing I can definitely state is that I talked to her during that period of time from 9:00 to 2:00 or whatever. I am sure Inspector McClatchey talked to her. I wasn't there all the time. I am sure the [41] customs agent talked to her, but whether she was being talked to for those five hours straight, I certainly can't say. I only had the occasion to talk over the case, or of the incident, to Mrs. San Juan for perhaps only for half an hour at the longest that I actually talked to her.

Q Was that consecutively?

A. Myself, sir?

Q Yes, consecutively.

A. Myself or the whole---

Q No, you, yourself.

A. Yes. I'd say.

Johnson — Cross Examination

Q Or was it on two different occasions?

A. No. I said the first part, I would have talked to Mrs. San Juan, let me see, perhaps half an hour in all, and then I am sure I went in again and talked to her, visited with her to see if she had calmed down and was all right, but it really wasn't interrogation or anything else the latter part of it. It was only the half hour I talked to her about the money and where she got it, et cetera.

Q I think you testified Inspector McClatchey took Mrs. San Juan into another room. Did you testify to that?

A. Something like that, Mr. Gruber. Mrs. San Juan wanted to sit down and we have what is like an open lobby, people coming in. It is not the best place in the world to be carrying on a conversation with someone about something [42] that is quite private to a person, to us. So we thought the best thing to do would be to go in one of the back offices, the inspector's room we use. There are desks, chairs and so on there, and we thought it would be best for her to go in there and sit down. We certainly didn't want her to have people coming in for her to be embarrassed or anything else, because she was upset.

Q Do you know whether the inspector--may I call her Joan--whether Joan searched Mrs. San Juan when she went into the room with her?

A. By a search, Mr. Gruber, do you mean of her purse, or personal search?

Johnson—Cross Examination

Q Any kind of search. Do you know of your own knowledge whether she did?

A. I would say Inspector McClatchey looked at the contents of Mrs. San Juan's purse, I would say, at the time after we went into the back room. I can't remember it being done. I would think it would be common practice that we would, though.

Q You just don't happen to know?

A. No, I can't say for sure it was done.

Q Did you ever go into the room where both Joan and Mrs. San Juan were present?

A. Oh, yes.

Q To that room where you have people sit down and so forth?

[43] A. Yes, I went in several times, as I said, to see if Inspector McClatchey would like to get up and talk, or walk, or a break, or if Mrs. San Juan wanted a cup of coffee, or some such thing, or give her a little break from the monotony of sitting there.

Q At some point did you ask the inspector whether or not she had asked Mrs. San Juan to sign the report?

A. If I did, sir, I don't remember. You mean if I asked Joan, if Joan had asked Mrs. San Juan to sign the report?

Q Yes.

A. I don't remember, sir. I know I did, originally; if she cared to complete it.

Johnson—Cross Examination

Q Does your report there refresh your recollection as to whether you asked Joan whether Mrs. San Juan had signed the report?

A. I will look, sir. No, sir. all I have is my notation I asked Mrs. San Juan if she would like to complete the form and offered my help to her if she did.

Q That was not in that room?

A. That wasn't in the room. It was after we had gone back, that is. That is when we first went back from the lobby, or outside office there, or very shortly after we went back.

Q Did you ask Joan whether or not a report, a Form 4790 had been presented to Mrs. San Juan for signature?

A. Again, did I ask her if another form had been presented?

[44] Q No, did you ask whether or not Form 4790 had been presented to Mrs. San Juan for signature?

A. I do not remember that, sir. I do not remember asking Joan that.

Q When did you first learn that Mrs. San Juan had not signed the report?

A. Well, when we went into the back office, first of all, and Mrs. San Juan sat down and we got her calmed down, I hope somewhat, I got the forms and asked her then if she would care to complete the forms, and she did not wish to at that time, and I knew then she didn't want to complete the form, but I don't know whether she was asked at a later date or time.

Johnson — Cross Examination

Q Did Mrs. San Juan say why she did not want to file the report, fill out the form?

A. All I remember her saying is she didn't want to fill it out. As I say, she was very upset, very nervous.

Q She never asked you why she had to fill out the form?

A. She possibly did; I don't remember.

Q Did she ever ask you whether she could get in touch with her husband?

A. Yes.

Q So that was one of the things she asked you, and did she tell you why she wanted to get in touch with her husband?

A. Would you say that again? I am sorry.

[45] (The reporter read the pending question)

A. She did ask if she could get in touch with her husband, yes.

Q (By Mr. Gruber) Did she tell you why she wanted to get in touch with her husband?

A. I assume it is all right to go into this, but I understand in the court it is hearsay.

Q Can you answer the question? The question was, did she tell you why she wanted to get in touch with her husband?

A. Yes.

Q Did she ask you whether she could get in touch with a lawyer?

A. I don't remember, sir. I don't remember her asking for a lawyer.

Johnson — Cross Examination

Q Would you look at your notes and see if you will refer---

A. There is nothing there. I read it to the end the other time.

Q Did you, at any time hear her say that she would like to get in touch with a lawyer because she doesn't understand what she is signing?

A. No, I didn't hear that.

Q Did Joan ever tell you that is what Mrs. San Juan had said?

A. No.

Q You were with her a half hour altogether, or with Agent McClatchey at various times, and she never raised the question with you of getting a lawyer?

[46] A. No, not that I remember.

Q Not that you remember?

A. No.

Q She may have?

A. It is possible, certainly.

Q You say you gave her a Miranda Warning?

A. I read the Miranda Warning to her, yes.

Q Do you have a copy?

A. No, I am sorry, I don't. Maybe, I do; I don't believe I do.

THE COURT. Don't we all know what the Miranda Warning contains?

MR. GRUBER. All right.

Johnson — Cross Examination

Q (By Mr. Gruber) Did you point out to her she was entitled to a lawyer?

A. Yes, certainly. That is part of the Miranda Warning, as you read it.

Q You say you did point it out?

A. It was read to her and it is part of our Miranda Warning. We read it. It says, "You can have a lawyer, if you so desire."

Q And, as far as you recall, she never asked you?

A. As far as I recall, she never asked me for a lawyer.

Q You say that you discovered the money at the counter outside this room where you eventually went?

[47] A. In the lobby, yes.

Q What did you do with the money after she went into the room?

A. The money was immediately turned over to the port director who was the officer in charge at that time.

Q The money was immediately turned over to whom?

A. The port director

Q Who is that?

A. The officer in charge of the shift at that particular day, his name is Robert Scott.

Q Let me understand you. The money was on the counter, you had discovered it, uncovered the money on the counter, and then you turned

Johnson—Cross Examination

that money over to Mr. Scott, the Port Director, is that correct?

A. Right.

Q When did you next see the money?

A. Two or three hours later, I guess, perhaps.

Q Where was it?

A. The port director had it on his desk.

Q Now you asked Mrs. San Juan to fill out a report prior to the time that money was turned over to the port director, is that right?

A. That is wrong; it was after.

Q You asked her to sign a report after you turned the money over to the port director, that right?

A. Yes.

[48] Q Were you present any time when the inspector-agent--I think his name is Mercier?

A. Right

Q Was talking to Mrs. San Juan?

A. No.

Q Let me go back to the moment, to the beginning of this occurrence. You say that when you went into the bus, you had no suspicion that Mrs. San Juan--of Mrs. San Juan, is that right?

A. I had no suspicion of Mrs. San Juan of anything, right. I had no knowledge of anything.

Q And, you had no suspicion of her even when you called her into the room where the counter was in the other room, is that right?

A. I had a suspicion of her, yes, to a degree.

Johnson — Cross Examination

Q What degree?

A. Because there was a couple of small brown envelopes, or packages, or whatever, in the bottom of her bag. I wanted to see what they contained. This is what I had to find out.

Q You wanted to see what was in those things?

A. I had to find out if there was contrabrand of any kind, type, or what was in there.

Q You had no suspicion there was anything there, did you?

A. No.

[49] Q You just wanted to look in there?

A. I had to be sure what was there.

Q Were you operating under the regulations of the Customs Service when you were making this search?

A. I certainly was.

Q Isn't it true that under--do you know the section of the regulations?

A. Well, the section of the regulations is U.S. 162.

Q Or, 482, is that right, 482?

A. Yes.

Q That gives you the authority to search?

A. To search persons and merchandise coming in for contraband or to detain persons to be searched.

Q If you suspect there is merchandise dutiable, or contraband coming in, is that right?

A. Yes.

Johnson—Cross Examination

Q You have the authority to make the search under Regulation 482, right?

A. Yes. I believe it is 1582, Title 18.

Q You believe you have the right to make a search when you suspect that there is contraband or dutiable goods coming in?

A. Yes.

Q You know that?

A. Yes.

[50] Q I think it is 482. You don't happen to have the regulation with you?

A. No, I don't, sir.

Q How long have you been with the service?

A. Thirteen years. Both of those are pretty much the same.

Q 158 and 482?

A. Pretty much the same; they read pretty much the same.

Q Did you suspect there was contraband, that Mrs. San Juan was carrying contraband?

A. That was the reason I did a further examination of the bag.

Q Well, prior to the time that you made the first inspection, did you have any suspicion she was carrying contraband?

A. Prior to the time I made the first inspection?

Q The inspection in the customs house.

A. Prior to opening the bag, I had no reason to suspect her.

Johnson — Cross Examination

Q So, in fact, that at the time you made the search, you started the search, you had absolutely no suspicion of any kind she was carrying contraband or goods that was dutiable?

A. Prior, sir? Prior, did you say?

Q Yes.

A. Prior, I had no suspicion.

Q When you went on the bus when this whole occurrence started, you saw Mrs. San Juan's passport?

A. She gave me her passport when I asked for her identification.

Q Did you notice her name, at that time?

A. No, I couldn't say I paid much attention to her name, other than the fact I looked at her picture and looked and saw it was a United States Passport, and I was satisfied the passport and picture went together. Her name meant nothing to me at that time as far as immigration went.

Q How about customs?

A. Customs are not interested in their passports, as far as customs.

Q When did you first learn her name?

A. I am sure when we went inside and I got her passport again; we asked for her passport inside, or she gave it to us, I don't remember.

Q What did you do with the passport?

A. I am not sure whether it was given back to her at that time, or given to the port director. I don't remember.

Johnson — Cross Examination

Q What else did you find in this little brown package besides money?

A. Inside the first package turned out to be pretty much of an envelope; I guess it would have to be called a brown envelope that appeared to contain several letters. I glanced at one. Inspector McClatchey opened the package.

Q Where was this?

A. In the office at the counter out in the lobby, and I [52] had gone around and it just appeared to be a letter.

Q Did you read the letter?

A. No, I had no reason to. I glanced at it and couldn't tell you one word off there. Down at a lower bottom right hand section of it, the words were either "Chinese Embassy" or some such word as that, and that is when I said to Inspector McClatchey, "This is nothing for us to get involved with," and proceeded to end our business right there. We put the money and letters and gave them to Port Director Scott.

Q You gave not only the money, but the letters?

A. Right. We had no reason to keep any part of it.

Q Do you know whether the letters were ever returned to Mrs. San Juan?

A. I don't know. I don't know for sure. I would say they weren't but I don't know whether they were or not.

Q You had no right to seize the letters, did you?

Johnson — Cross Examination

A. Not unless they pertained to something pertaining to the case. If they did, they would be subject to seizure, I would think.

MR. REED. He is asking a legal conclusion and the witness may not be competent.

THE COURT. The Court has that in mind.

Q (By Mr. Gruber) How many letters were there, do you know?

A. I would say, half a dozen.

[53] Q And, you say that you turned those letters together with the money over to Mr. Scott?

A. Right; at that point.

Q At any time thereafter, did you see either the letters or the money?

A. As I said earlier, perhaps a couple hours later on, the money part of it, the port director had counted the money; that is, Scott had counted the money and asked some one to verify it. I saw it at that time; I saw the money at that time.

Q Where was it at that time?

A. This is a couple hours--I will just say 11:30. I didn't keep track of the time. I didn't make note on that, but a couple hours after Mrs. San Juan arrived, I saw the money. I am trying to think whether it was before or after. Anyhow, during the course of the morning, I will say, or thereabouts, I had occasion to see one letter. I can't tell you who it was to or from. Port Director Scott had asked me to go with a supervisor immigrant inspector and that he wished to make a copy of this letter. It was a letter of two or three pages, perhaps, and all he wanted

Johnson—Cross Examination

me to do is give him a hand to help him out. That is all. So I went and just to keep continuity from this page to that page is all. I looked to read a couple lines here and a couple lines up here to see they were together, and I would guess [54] from memory, three or four pages, I would say.

Q And, did you have copies made of those, did you say?

A. I don't know. The port director asked that I go with this officer to assist him in making a copy of this letter. That is all I know about it.

Q Did you see some one make a copy of that letter?

A. Yes.

Q You were standing there?

A. Yes, that is why I went with him.

Q Where was this?

A. This would be upstairs where the immigration have a printing machine.

Q Do you know whether copies were made of the other letters? You say there may be six or seven?

A. I don't know of any other copy.

Q Since you gave the Miranda Warning to Mrs. San Juan, did you think she was under arrest?

A. Did I think she was under arrest?

Q Yes.

A. Most certainly not, no. I gave the Miranda Warning so a person does not say anything.

Johnson — Redirect

This is my version and reason if it. A person should be forewarned not to say anything that might incriminate them, or cause them any grief. This is what I try to impress on people; they don't have to answer any questions if they don't want to.

[55] Q So you normally give people, did you say, Miranda Warnings when you have them in the customs house?

A. If it is a serious offense or case, or for their benefit, I give the Miranda Warnings to a person.

MR. GRUBER. I have no further questions.

Johnson — Redirect Examination

Q (By Mr. Reed) I believe you testified when I was asking questions, Mr. Johnson, the reason you conduct secondary searches is that you have some suspicion you want to satisfy, is that correct?

A. That is right.

Q Isn't it fair to say you had some suspicion at the time you asked Mrs. San Juan to go in for a secondary search then?

A. After the bag was opened, I had some suspicion and that is the reason I asked her to come inside to continue the examination, or do the secondary examination.

Q You say you saw two envelopes in this bag, is that correct?

A. There appeared to be two brown packages or envelopes in the bag, in the bottom.

Q During the routine search?

A. During the routine examination.

Johnson—Redirect Examination

Q Is it routine to have people open their bags as a matter of a primary search?

A. Right, it is.

[56] Q In your experience in thirteen years, many times you have no suspicion of any one when you asked for a primary search and it develops during the primary search you have cause to have further suspicion?

MR. GRUBER. I object.

THE COURT. We'll take the answer.

A. Yes.

Q (By Mr. Reed) Is that, in fact, what happened in this situation?

A. Yes.

Q Now I believe you testified that Mrs. San Juan told you there were books in these envelopes. Did they look like the type of envelopes that would contain books?

A. It was very hard to tell. They were at the bottom of a bag covered with clothing. The woman was moving the clothing around and just appeared to be brown packages, that is all. They were at the bottom, and that is all they appeared to me, at that time.

MR. REED. That is all I have, your Honor.

MR. GRUBER. May I have a moment, your Honor?

THE COURT. Yes.

MR. GRUBER. No further questions.

THE COURT. All right, Mr. Johnson, you may step down.

MR. REED. The Government has two more witnesses

McClatchey—Direct

**Joan K. McClatchey, Sworn
Government's Direct Examination**

[62] Q (By Mr. Reed) Please state your name again?

A. Joan K. McClatchey.

Q How are you employed Mrs. McClatchey?

A. As a customs inspector at the Port of Highgate Springs, Vermont.

Q How long have you been employed by customs?

A. Over three years.

Q Is this the first time you ever testified in court?

A. Yes, it is.

[63] Q I will ask you some simple questions. We have been referring, and I believe you have been here in the courtroom and heard we are referring to the incident that took place at Highgate Springs the 30th of March. Do you recall that date?

A. Yes, I do.

Q Do you recall having dealings with a woman that came known to you as Delia San Juan?

A. Yes.

Q Did you ever search Mrs. San Juan or her possessions?

A. Yes.

McClatchey—Direct Examination

Q Explain what you did regarding the search.

A. Well, as Inspector Johnson stated, her baggage was brought into the customs lobby, and we were looking through her belongings there in the routine secondary examination. I happened to open a package which contained several envelopes of which were opened. I looked inside at a piece of paper in one of the envelopes and saw it was a letter, and put it down. At that time, Mrs. San Juan became very nervous, and Inspector Johnson discovered the money in the other brown package. We then took Mrs. San Juan into the rear of the customs office and detained her for further questioning.

Q Did you make any further searches of her possessions?

A. Yes, I went through her pocketbook in the back room, [64] and when the agent arrived, checked her clothing at their request.

Q Did you find anything of any interest?

A. I found only one slip of paper with a name on it, which may or may not be relevant.

Q Did you retain that as evidence relating to this matter?

A. Yes, it was retained.

Q Did you participate at all in the seizure or the custody of the money involved in this matter?

A. I never saw the money after they took it off the counter.

McClatchey—Direct Examination

Q Are you familiar with the Treasury Form 4790? I believe it is Customs Form 4790 which is a declaration of monies over \$5,000?

A. I am familiar with it. We don't have much occasion to use it, but it is at the office.

Q Did you give Mrs. San Juan, during this incident, an opportunity to fill this form out?

A. Inspector Johnson brought the form in when Mrs. San Juan and I were in the back room. It remained on the desk between us for about three hours until the agent came and we talked about it from one time to another, and she did have an opportunity to fill it out during that time.

Q Did she do so?

A. No, she didn't.

[65] Q At this time, was she informed to fail to fill this form out was against the law?

A The penalties were listed on the back of the form, I believe, and she was aware of them.

MR. REED. That is all, your Honor.

CROSS EXAMINATION

Q (By Mr. Gruber) Is it Miss or Mrs.?

A. Mrs.

Q Did Mrs. San Juan ask for permission to get in touch with a lawyer?

A. Mrs. San Juan wanted the form to be clarified to her and I believe she mentioned about having a lawyer do this for her, but as far as actually getting in touch with one, I don't believe she wanted to get in touch with a lawyer at that time.

McClatchey—Cross Examination

Q Didn't she say to you "I would like to talk to a lawyer"?

A. She stated she wanted to talk to her husband.

Q And, not to a lawyer?

A. Not at that time, no.

Q Well, at any time that you were there?

A. Not when I was there.

Q But she did want a lawyer to explain to her what the form meant?

A. I was under the impression she wanted to take it with her.

[66] Q As to what?

A. Take the form with her and have a lawyer clarify it.

Q When you say you are under the impression, are you saying she did not ever ask for the opportunity to telephone a lawyer?

A. That is right.

Q That is right?

A. Yes.

Q But she did ask for the opportunity to telephone her husband?

A. She did, yes, several times.

Q That was denied her, is that right? Just answer the question "yes" or "no," please.

A. I can't answer it "yes" or "no".

Q All right, then explain.

McClatchey—Cross Examination

A. At first yes, until we wanted to find out more what was going on before we let her telephone any one.

Q I see. For how many hours did you say you were with her approximately during this five hour period?

A. I was with Mrs. San Juan alone for approximately three hours, and I was a witness when the agents came and questioned her later.

Q And, at no time after the money was taken to Mr. Scott did you see the money?

A. No.

Q Did you hear any one say to Mrs. San Juan that it was too [67] late for her to sign the report?

A. Yes.

Q Who said that?

A. The agent.

Q What is his name?

A. Mr. Mercier.

Q When was that?

A. Some time after they arrived.

Q Was that in the afternoon, do you think?

A. It was in the afternoon.

Q You don't recall when he arrived, about?

A. Before noon.

Q But then he stayed on after noon?

A. He stayed on after noon, yes.

McClatchey—Cross Examination

Q And, he was the one you heard say it was too late for her to sign the report?

A. She had been given the opportunity after they arrived to sign it.

Q Did you hear Mrs.---did you hear Mr. Mercier talk to any one on the telephone about this matter while you were there?

A. No. I was in the room with Mrs. San Juan and there is no telephone in that room.

Q As far as you know, the only time that the report was presented to her for signature was when you---

A. The report was on that desk for approximately four hours, [68] between us.

Q I thought you said three before.

A. It was on the desk for approximately an hour after the agent arrived and during the time I was in the room.

Q How soon before the special agent left did you hear him tell Mrs. San Juan that it was too late for her?

A. I don't recall.

Q To sign the report?

A. I don't recall.

MR. GRUBER. I have no further questions.

MR. REED. None, your Honor. We call Richard Mercier.

Mercier—Direct Examination

**Richard F. Mercier, Sworn
Government,s Direct Examination**

Q (By Mr. Reed) State your name, sir.

A. Richard F. Mercier.

Q Am I correct, Mr. Mercier, you are with the Customs authority in an investigative role?

A. Yes, sir.

Q And, your title is?

A. Special Agent.

Q Now referring to the date in question, did you respond to a call regarding a shipment of a large quantity of cash across the border on the 30th of March?

A. Yes, sir.

[69] Q Approximately what time of day did you arrive at Highgate Springs, assuming a few things for speedy---

A. Approximately 11:00 - 11:30 a.m.

Q When was the first time you saw the defendant, Mrs. San Juan?

A. Approximately around quarter to twelve.

Q Where did see her?

A. She was in a room at the Port of Entry at Highgate Springs, Vermont.

Q Was it your understanding when you arrived, Mr. Mercier, that this matter concerned the report requirements of Title 31, Sections 1101, 1058 et cetera?

A. Yes, sir.

Mercier—Direct Examination

Q Are you familiar with this Form 4790, I believe that is the correct number.

A. Yes, sir.

Q When you saw Mrs. San Juan was this form present in the room, to your recollection?

A. Yes sir, I believe it was.

Q What did you do immediately upon arriving at Highgate Springs?

A. I conferred with the port director and then with the inspectors who were concerned in the matter to ascertain exactly what had occurred.

Q I believe it is understood through testimony that there [70] was a large quantity of cash? Did you see this cash at all during that day?

A. Yes, sir, I did.

Q When did you first see it?

A. The currency was located on the supervisor-inspector's desk in the room at the port director's office, where the port director had it in his custody, and he was conferring with me and advising me as to how it was found.

Q As you understand the customs procedures, in effect, that money was in the custody of the port director, is that correct?

A. Yes, sir.

Q And, is that where it remained that day?

A. Yes, sir.

Mercier—Direct Examination

Q Now regarding your seeing Mrs. San Juan, is it correct you saw her in that room with Mrs. McClatchey, as she testified?

A. Yes, sir.

Q Who else was present?

A. At the time, nobody except Mrs. McClatchey and Mrs. San Juan.

Q Please tell the Court what you did when you saw the defendant.

A. I immediately advised her of her rights, constitutional rights under Miranda, and after ascertaining what had occurred from the inspectors and the port director, explained to her point-by-point what Miranda meant until she [71] fully understood her rights and showed her a piece of paper which had the rights on there indicating she had the opportunity to waive her rights, if she so desired.

Q Did she, in fact, sign a waiver of rights?

A. She signed the statement of rights indicating that she had been aware she received her rights. She was concerned; that she didn't want to waive her rights. We wanted to make sure she could stop the questioning at any time, to consult with an attorney, to answer any question I put to her.

Q Did she ask to have an attorney present while you were there with her?

A. No, sir.

Q Did she ever ask if she could call a lawyer?

A. No, sir.

Mercier—Direct Examination

Q Did she ask if she could call her husband?

A. Yes, she did.

Q Did you permit this?

A. Not until such time as I concluded my questioning of Mrs. San Juan.

Q Regarding this Form 4790, did you explain what this form was to Mrs. San Juan?

A. Yes. I went over the form with her, explained to her what the form meant, what the regulations called for, and why, and tried to ascertain why she didn't want to file it.

[72] Q What did she tell you?

A. She said it wasn't her money and she just didn't know what to do and didn't know what to do at all. She just felt she couldn't answer the questions on the form.

Q Mr. Mercier, did she appear to know what those questions were? Again, this is a difficult question. Did she seem to understand what that form meant to her?

A. I would say she would, probably. She understood that if she answered the questions she obviously might have some problem.

Q You didn't think she had any trouble understanding the requirement that form be filled out?

A. She knew exactly what I explained to her and what she had to do. She didn't know exactly whether she should or shouldn't.

Q She had no language problem?

A. No, she did not.

Mercier—Direct Examination

Q Did you, at any time, search the defendant, Mrs. San Juan?

A. Not personally, no, sir.

Q Were you present during the search of a bus that was testified to by Agent Johnson?

A. No, sir.

Q Did you seize the money in question, at all?

A. I did not, no, sir. The port director had custody of it.

MR. REED. That is all.

Mercier Cross Examination

[73] Q (By Mr. Gruber) When did you last see Mrs. San Juan at the customs office?

A. I would say around two o'clock on March 30th.

Q And, were you questioning her between 11:30 when you got there and two o'clock?

A. I was; in the course of my investigation, I talked to her. I also talked to other people at the port there.

Q. But you talked to her frequently during that period?

A. Yes, sir.

Q Did she try to leave?

A. No, sir.

Q Did you tell her she had to stay there?

A. The question never came up.

Mercier—Cross Examination

Q And, you say you left about 2:30?

A. That is an assumption, sir. I got back to my office, I believe, around 3:00, but I can't be sure of that. I am only back-tracking on time.

Q Did you make a telephone call to some one from the office at any time after you got to the customs office?

A. Yes, I did.

Q To whom?

A. I called my supervisor, the special agent in charge, and I also called the United States Attorney.

Q Whom did you call first?

[74] A. I called, I believe, Bill Gray, Assistant United States Attorney.

Q The United States Attorney?

A. Right.

Q And then you called whom?

A. My supervisor.

Q His name?

A. Leonard Chagnon.

Q How do you spell it?

A. C-h-a-g-n-o-n.

Q After that telephone conversation--well, first, with Mr. Chagnon, did you come back and tell Mrs. San Juan that it was too late for her to sign the form?

A. After conferring with Mr. Chagnon?

Mercier—Cross Examination

Q On the telephone.

A. Does the question refer to the conversation I had with Mr. Chagnon?

Q No. I said after you spoke to Mr. Chagnon did you come back and tell Mrs. San Juan it was too late for her to file the form?

A. No, sir.

Q When did you tell her that?

A. I believe it was after my interrogation or questioning of Mrs. San Juan and I conferred with the United States Attorney.

[75] Q Give us the time, if you can.

A. 1:30-1:45; that is a guess, I can't be accurate.

Q You estimate it was 1:30 or 1:45 when you told Mrs. San Juan that it was too late for her to sign the form, is that right?

A. Yes, sir.

Q And, during that time, or when you told her, she was still at the port of entry, is that right?

A. Yes, sir, she was being released and I told her what was transpiring, and a receipt would be issued to her for the money, and she was free to go, and she had been given ample opportunity and that was the end of it.

Q That was the end of it?

A. That was the end of it.

Q Did the United States Attorney or Mr. Chagnon say she had ample time?

A. I believe the Assistant United States Attorney said something to that effect.

Mercier—Cross Examination

Q That was who, again?

A. Bill Gray.

Q When you told Mrs. San Juan, or when you asked Mrs. San Juan, rather, the last time to sign Form 4790, did you indicate at that time what would be done with the money?

A. No, sir, I don't believe I did.

Q Did she ask you what would happen if she signed it with [76] respect to the money?

A. Did she ask me--repeat that please.

(The reporter read the pending question.)

A. I believe she asked that.

Q (By Mr. Gruber) What did you say?

A. I believe I told her that even if she filed the form that with the circumstances that had been developed by the inspector at the border, that the money would be detained until an investigation had been concluded.

Q You told her that?

A. I believe so, yes, sir.

Q When you say you believe that---

A. That would have been my answer if she asked me that. That would have been my response, sir.

Q I know, but what was the response, not what would have been, Mr. Mercier.

A. I am fairly positive, sir. It has been a few months, but in my recollection I am fairly sure that is exactly what I responded to her in response to her question.

| *Mercier—Cross Examination*

Q Would you repeat it?

A. Would you go back to the original question.
I would like to have that again, please.

(The reporter read the requested question.)

Q (By Mr. Gruber) First, did she ask you that?

A. Yes, she did.

[77] Q All right, what was your reply, as you recall it?
Not what you would have said.

A. As I recall it, I told Mrs. San Juan that if
she signed the form we would still--we didn't
get into the point what would happen to the
money.

Q That is what the question was directed to, Mr.
Mercier.

A. She was asked to sign the form, the ques-
tions concerned. I attempted to ascertain why
she did not want to sign the form.

Q Would you try to answer the question please.
Did Mrs. San Juan ask you what would happen
to the money if she did sign the form?

A. Sir, I believe she asked me that question.

Q All right, that is the answer to the question.
Now, what was your answer?

A. My answer, from my recollection, is that
even if she signed the form I advised her the
money was going to be seized, but this con-
versation occurred very late, almost to the
point we were that she was going to be free to
go down the road.

Q She was going to be what?

A. We had concluded her customs examination
at the port.

Mercier—Cross Examination

Q You were going to release her?

A. Yes, sir.

Q And, was the reason why you gave the answer that you think [78] you gave to Mrs. San Juan's question, the fact that it was already too late, the time for her to sign had already passed? Is that the reason you gave that answer.

A. The time for her passing, or the time had passed in that the money was going to be detained for investigation by our office whether she signed the form or not.

Q Well, do you mean to say that you had other reasons for holding that money than the fact she didn't sign the report, is that what you are telling us?

A. No, sir,

Q What do you mean, "investigation"?

A. We were trying to find out why she didn't want to file 4790 and who the money belonged to. We had no understanding who the money belonged to. She wouldn't answer any questions regarding it.

Q Very well, but the reason that you were going to investigate was something else besides the fact that she didn't sign the report, isn't that true?

MR. REED. The question has been answered, your Honor.

THE COURT. Yes, this is very repetitious, Mr. Gruber. Hasn't he answered?

MR. GRUBER. I am not sure that he has, sir, but the record will say.

Mercier—Cross Examination

MR. REED. The record will indicate "No, sir"[79] to the question, your Honor.

THE COURT. Anything further, Mr. Reed?

MR. REED. Are you done, Mr. Gruber?

Q (By Mr. Gruber) Is it your testimony, Mr. Mercier, that at no time during your interrogation of Mrs. San Juan that she did not say to you that "I am ready to sign the report if you tell me really what it means"?

A. No, sir.

Q At no time?

A. At no time did she say that.

MR. GRUBER. I have no further questions.

REDIRECT EXAMINATION

Q (By Mr. Reed) At the risk of repetition, I believe you did tell Mrs. San Juan her time was pretty much up as far as filling the form out?

A. Yes, I did.

Q Was it part of your considerations that you didn't want to detain the woman any longer?

A. That is correct, sir.

Q And, did you give her opportunity to sign that form up to the time she left on the bus that afternoon?

A. Yes, sir.

Q Did she ever indicate even the slightest willingness to sign that form?

A. None whatsoever.

Mercier—Redirect Examination

[80] Q Did she indicate any willingness when you told her she could leave?

A. No, sir.

Mercier Recross Examination

Q (By Mr. Gruber) Mr. Mercier, you did tell her at one time, as you testified, did you not, that it was too late for her to sign the form?

A. Yes, sir.

Q And that was some time between 11:30 and 2:30, isn't that right?

A. No, sir.

Q Didn't you testify that between 11:30 a.m. of that day and 2:30 that afternoon at some time after you called the United States Attorney and Mr. Chagnon that you told her that she no longer had the opportunity to file the report? Isn't that what you testified just a few minutes ago?

A. She had---

Q Did you, or did you not testify to that fact?

A. Sir, I am trying to recall; my recollection is that I advised her that she had no more opportunity to file the form with customs at some time upon very close to her release, or her termination of customs inspection at the port.

Q About what time was that?

A. Approximately, I am saying about 1:30 p.m.

Q You told her at that time she no longer had the opportunity [81] to sign the report, right?

A. Her signing the report would have made no difference at that point.

Mercier—Recross Examination

MR. GRUBER. No further questions.

THE COURT. Anything further, Mr. Reed?

MR. REED. No, your Honor.

THE COURT. All right, Mr. Mercier. Any further evidence to present with reference to the---

MR. REED. I have run out of witnesses, I believe, your Honor.

MR. GRUBER. No, your Honor.

THE COURT. The way the Court proposes to handle the defendant's motion to suppress and for the return of the monetary instruments and other documents is as follows: The Court is going to deny the motion at this time with leave however on the part of the defendant to file a memorandum of law with the Court within ten days and the Government has an additional ten days in which to file a memorandum of law and based thereon, if the Court considers it necessary, we'll reopen the matter and make a ruling based on the memoranda.

4790
Form
(Rev. May 1973)
Department of the Treasury
Internal Revenue Service

**Report of International Transportation of
Currency or Monetary Instruments**
(PLEASE TYPE OR PRINT)

This form is to be
filed with the
Bureau of Customs

Part I For Individual Departing From or Entering the United States

1 Name (last or family, first, and middle)	2 Identifying number (see instr.)	3 Date of birth (month, day, and year)
4 Permanent address in United States or abroad		5 Of what country are you a citizen or subject?
6 Address while in the United States		7 Passport number and country
8 U.S. visa date	9 Place United States visa was issued	10 Immigration alien number, if any

COMPLETE EITHER 11(a) or 11(b) WHICHEVER IS APPLICABLE

- 11(a) I am departing from the United States at: (City) _____ (Country) _____
and my destination is: (City) _____ (Country) _____
(b) I arrived in the United States at: (City) _____ (Country) _____
from this: (Foreign City) _____ (Country) _____

Part II For Person Shipping, Mailing or Receiving Currency or Monetary Instruments

12 Name (last or family, first, and middle) or business name	13 Identifying number (see instr.)	14 Date of birth (month, day, and year)
15 Permanent address in United States or abroad		16 Of what country are you a citizen or subject?
17 Address while in the United States		18 Passport number and country
19 U.S. visa date	20 Place United States visa was issued	21 Immigration alien number, if any
22 The date of shipment or receipt of currency or instrument ▶ _____		19
23 The currency or monetary instrument was shipped <input type="checkbox"/> to or received <input type="checkbox"/> from ▶ _____ (Name) (Address)		

24 If the currency or monetary instrument was mailed, shipped, or transported, please complete the following:

(a) Method of shipment (Auto, U.S. Mail, Public Carrier, etc.) ▶ _____

(b) Name of transporter or carrier ▶ _____

Part III Currency and Monetary Instrument Information (See instructions) (To be completed by everyone)

Type and amount of currency and/or monetary instrument:	Value in U.S. Dollars
25 (a) <input type="checkbox"/> Coins	\$ _____
(b) <input type="checkbox"/> Currency	\$ _____
(c) <input type="checkbox"/> Bearer instrument (specify type) ▶ _____	\$ _____
(d) Total amount (add lines (a), (b) and (c))	\$ _____
26 If other than United States currency is involved, please complete the following: (See instructions)	
(a) Currency name ▶ _____	(b) Country ▶ _____

Part IV General—To be Completed by All Travelers, Shippers and Recipients

27 Were you acting as an agent, attorney, or in other capacity for anyone in this currency or monetary instrument activity? ☐ Yes ☐ No

If "yes," please complete the following:

(a) Name of person in whose behalf you are acting ▶ _____

(b) Complete address of that person ▶ _____

(c) Business activity, occupation or profession of that person ▶ _____

Under penalties of perjury, I declare that I have examined this report, and to the best of my knowledge and belief it is true, correct and complete.

Sign here ▶ _____ Signature _____ Date _____
(Title, if applicable)

Reverse Side Of Form 4790

General Instructions

This report is required by Treasury Department regulations (31 Code of Federal Regulations 103).

Who Must File.—Each person who physically transports, mails, or ships, or causes to be physically transported, mailed, shipped or received currency or other monetary instruments in an aggregate amount exceeding \$5,000 on any one occasion from the United States to any place outside the United States, or into the United States from any place outside the United States.

A TRANSFER OF FUNDS THROUGH NORMAL BANKING PROCEDURES WHICH DOES NOT INVOLVE THE PHYSICAL TRANSPORTATION OF CURRENCY OR MONETARY INSTRUMENTS IS NOT REQUIRED TO BE REPORTED.

Exceptions.—The following persons are not required to file reports: (1) a Federal reserve bank, (2) a bank, a foreign bank, or a broker or dealer in securities in respect to currency or other monetary instruments mailed or shipped through the postal service or by common carrier, (3) a commercial bank or trust company organized under the laws of any State or of the United States with respect to overland shipments of currency or monetary instruments shipped to or received from an established customer maintaining a deposit relationship with the bank, in amounts which the bank may reasonably conclude do not exceed amounts commensurate with the customary conduct of the business, industry or profession of the customer concerned, (4) a person who is not a citizen or resident of the United States in respect to currency or other monetary instruments mailed or shipped from abroad to a bank or broker or dealer in securities through the postal service or by common carrier, (5) a common carrier of passengers in respect to currency or other monetary instruments in the possession of its passengers, (6) a common carrier of goods in respect to shipments of currency or monetary instruments not declared to be such by the shipper, (7) a travelers' check issuer or its agent in respect to the transportation of travelers' checks prior to their delivery to selling agents for eventual sale to the public, nor by (8) a person engaged as a business in the transportation of currency, monetary instruments and other commercial papers with respect to the transportation of currency or other monetary instruments overland between established offices of banks or brokers or dealers in securities and foreign persons.

When and Where to File:

A. Recipients.—Each person who receives currency or other monetary instruments shall file Form 4790, within 30 days after receipt, with the Customs officer in charge at any port of entry or departure or by mail with the Commis-

sioner of Customs, Attention: Currency Transportation Reports, Washington, D.C. 20226.

B. Shippers or Mailers.—If the currency or other monetary instrument does not accompany the person entering or departing the United States, Form 4790 may be filed by mail on or before the date of entry, departure, mailing, or shipping with the Commissioner of Customs, Attention: Currency Transportation Reports, Washington, D.C. 20226.

C. Travelers.—Travelers carrying currency or other monetary instruments with them shall file Form 4790 at the time of entry into the United States or the time of departure from the United States with the Customs officer in charge at any Customs port of entry or departure.

An additional report of a particular transportation, mailing, or shipping of currency or other monetary instruments, is not required if a complete and truthful report has already been filed. However, no person otherwise required to file a report shall be excused from liability for failure to do so if, in fact, a complete and truthful report has not been filed. Forms may be obtained from any Internal Revenue or Bureau of Customs office.

PENALTIES.—Civil and criminal penalties, including under certain circumstances a fine of not more than \$500,000 and imprisonment of not more than five years, are provided for failure to file a report, supply information, and for filing a false or fraudulent report. In addition, the currency or monetary instrument may be subject to seizure and forfeiture. See sections 103.47, 103.48 and 103.49 of the regulations.

Definitions

Bank.—Each agent, agency, branch or office within the United States of a foreign bank and each agency, branch or office within the United States of any person doing business in one or more of the capacities listed:

- (1) a commercial bank or trust company organized under the laws of any state or of the United States;
- (2) a private bank;
- (3) a savings and loan association or a building and loan association organized under the laws of any state or of the United States;
- (4) an insured institution as defined in section 401 of the National Housing Act;
- (5) a savings bank, industrial bank or other thrift institution;
- (6) a credit union organized under the laws of any state or of the United States; and
- (7) any other organization chartered under the banking laws of any state and subject to the supervision of the bank supervisory authorities of a state.

Foreign Bank.—A bank organized under foreign law, or an agency, branch or office located outside the United States of a bank. The term does not include an agent, agency, branch or office within the United States of a bank organized under foreign law.

Broker or Dealer in Securities.—A broker or dealer in securities, registered or required to be registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934.

IDENTIFYING NUMBER.—Individuals should enter their social security number, if any. However, aliens who do not have a social security number should enter passport or alien registration number. All others should enter their employer identification number.

Investment Security.—An instrument which: (1) is issued in bearer or registered form; (2) is of a type commonly dealt in upon securities exchanges or markets or commonly recognized in any area in which it is issued or dealt in as a medium for investment; (3) is either one of a class or series or by its terms is divisible into a class or series of instruments; and (4) evidences a share, participation or other interest in property or in an enterprise or evidences an obligation of the issuer.

Monetary Instruments.—Coin or currency of the United States or of any other country, travelers' checks, money orders, investment securities in bearer form or otherwise in such form that title thereto passes upon delivery, and negotiable instruments (except warehouse receipts or bills of lading) in bearer form or otherwise in such form that title thereto passes upon delivery. The term does not include bank checks made payable to the order of a named person which have not been endorsed or which bear restrictive endorsements.

Person.—An individual, a corporation, a partnership, a trust or estate, a joint stock company, an association, a syndicate, joint venture, or other unincorporated organization or group, and all entities cognizable as legal personalities.

Special Instructions

You should complete each line which applies to you.

Part II.—Line 22. Enter the exact date you shipped or received currency or the monetary instrument(s).

Line 23. Check the applicable box and give the complete name and address of the shipper or recipient.

Part III.—Line 26. If currency or monetary instruments of more than one country is involved, attach a schedule showing each kind, country, and amount.

Motion To Dismiss Under Rule 12(b)(2)

UNITED STATES DISTRICT COURT

DISTRICT OF VERMONT

UNITED STATES OF AMERICA

v.

DELIA AGUILAR SANJUAN

Criminal No. 75-46

**DEFENDANT'S MOTION TO DISMISS THE
INFORMATION UNDER RULE 12(b) (2) OF
THE FEDERAL RULES OF
CRIMINAL PROCEDURE**

The defendant moves to dismiss the Information filed on October 22, 1975 on the ground that said Information when read together with the written claims of the Government set forth in its Memorandum dated November 22, 1975 in opposition *inter alia* to defendant's motion to suppress does not charge an offense under the Bank Secrecy Act of 1970 and the regulations enacted pursuant thereto. In support of her motion defendant alleges as follows:

1. The Information charges the defendant with willful failure to file a report with the Treasury Department disclosing certain information required by 31 USC §§1101 (a) and 1101 (b); and 31 CFR §§103.23(a) and 103.25(b).

2. This court in footnote 5 on page 23 of its Decision dated December 29, 1975 on both the constitutionality of the Bank Secrecy Act and on defendant's motion to suppress noted that:

Motion To Dismiss Under Rule 12(b)(2)

"The actual form on which the report is required to be made is Form 4790 of the Internal Revenue Service of the Treasury Department, entitled "Report of International Transportation of Currency or Monetary Instruments." It is required to be filed with the Bureau of Customs. A sample of Form 4790 was presented to the Court at the hearing on October 29, 1975 but was not offered in evidence. This sample form has now been designated Court Exhibit 1 and made part of the record for review purposes."

3. The Government explicitly states that the crime under the Sections of the Act and the regulations set forth in the Information occurred (a) on the bus and (b) when, on the bus the defendant did not declare the monetary instruments to Inspector Johnson.*

4. The Statute however does not require an oral declaration. It requires the filing of a report on Form 4790. Neither the Statute nor the regulations thereunder make it a crime for the transporter to fail to make an oral declaration of the currency. On the contrary even had the defendant made an oral declaration she would nevertheless have had to fill out Form 4790 and thus be subject to the sanctions therein.

It is therefore respectfully submitted that the Information when read together with the claim of the Government that the crime occurred when the defendant failed to declare the currency to Mr. Johnson on the bus must be dismissed since it does not set forth an offense under the Statute.

*See, Government's Memorandum, page 4;

"... the Government contends that her [Mrs. San Juan's] failure to file a *report* as required by the statute took place at the time she did not declare the monetary instruments to Inspector Johnson on the bus initially." (Emphasis added).

Motion To Dismiss Under Rule 12(b)(2)

OPPOSITION TO DEFENDANT'S MOTION TO DIS-
MISS THE
INFORMATION UNDER RULE 12(b)(2) OF
THE FEDERAL RULES OF
CRIMINAL PROCEDURE

The United States of America, by and through George F. Cook, United States Attorney for the District of Columbia, hereby states its response to the motion of defendant Delia Aguilar San Juan, to dismiss the Information pursuant to Rule 12(b)(2) of the Federal Rules of Criminal Procedure.

Defendant San Juan has moved for dismissal of the Information on the ground that the Information fails to state an offense under the Bank Secrecy Act of 1970 and the regulations enacted thereunder. The Government notes that the defendant has failed in any manner indicate how the Information is facially invalid. The Government does not believe that defendant can obtain a pre-trial motion for directed verdict without the Court having had an opportunity to hear the evidence. This is essentially what defendant is attempting to do by use of the Government's statement of its theory of the case in its response to defendant's motion to suppress.

The Government does rely upon the theory previously set out in its memorandum whereupon it indicated that the violation took place on the bus at the time that the defendant failed to declare the monetary instruments to Inspector Johnson. The Government's position is that at that time defendant San Juan had indicated an intent not to in any manner file a report of the importation of monetary instruments.

The logic behind the Government's position here had been set forth previously in its memorandum, but

Motion To Dismiss Under Rule 12(b)(2)

the Government does not believe the Court is in a position to make a decision on its legal theory pending the presentation of evidence. The motion to dismiss the Information should be denied.

**Excerpts from Transcript of Hearing on
Motion to Dismiss January 19, 1976**

[8] THE COURT. The Government certainly has indicated, as Mr. Gruber has stated, in two instances, at this state of the proceeding anyway, they believe the offense occurred when the defendant failed to make a declaration on the bus. There isn't any question about that, is there?

MR. HUGHES. No, there isn't, your Honor, that is no problem. The Assistant United States Attorney has stated that is his concept of the case. Defense isn't surprised by it. If they were, then they are not now. If they don't have time to prepare for that nagle, the Government is willing to give them more time.

* * *

MR. GRUBER. IF your Honor has ruled, I should like to respectfully request from your Honor permission to file a motion for a bill of particulars. I know, normally, that should come---

THE COURT. Yes, Mr. Gruber. I think we have had many motions filed in this matter. The disposition has been made of those motions. I think the motion for a bill of particulars is untimely, but quite frankly, I don't know what else it could disclose than has been disclosed by the Government, and certainly you had an opportunity that doesn't exist in many federal criminal cases to determine pretty much what the case is going to be, and I think it is untimely. I will deny that motion, and that is going to bring us to the next question as to when the matter can be tried. Is the Government prepared to go forward?

* * *

Admissibility of Government
Exhibits

EXCERPTS FROM TRANSCRIPT
OF MARCH 9-11, 1976

* * *

[233] THE COURT. All right. Ladies and gentlemen, it would appear to the Court there are some further legal matters that we are going to have to take up out of your presence at this time. So we will have to ask you to retire to the jury room and try to make it as expeditiously as possible. I hope I do better than last time. It is hard to know. So if you will go the jury room, I will stay on the bench.

(The jury left the courtroom at 1:50 p.m.)

THE COURT. Mr. O'Neill.

MR. O'NEILL. Your Honor, we would, at this time, offer into evidence Exhibits "1" and "2" which are the brown paper items.

THE COURT. Do you have any objection to "1" and "2", Mr. Gruber?

MR. GRUBER. No.

THE COURT. Then "1" and "2" are admitted.

(Government's Exhibits "1" and "2"
were received in evidence.)

Admissibility of Government Exhibits

MR. O'NEILL. Thereafter, your Honor, Exhibits "3," "4," "5," "6," "7," "8," "9," "12" and "13".

MR. GRUBER. Well, can we take them up seriatim, Mr. O'Neill?

MR. O'NEILL. Whatever way the Court wants [234] to do it is fine with me.

THE COURT. That might be the easiest way; take them up item-by-item.

MR. GRUBER. I object to "3," your Honor.

THE COURT. Let's hear from Mr. O'Neill what he claims for "3".

[234] MR. O'NEILL. Your honor, I think we indicated at this point, that this letter, which the Court can see in front of it, refers to a number of trips to Canada. We note she was coming from Canada, and it notes in there a reference "to your American friends". Following, thereafter, it notes "that your husband is well-known in the United States and in the Philippines for his political views and activities". This corresponds with Mrs. San Juan's concern for her husband in some degree. She didn't say at the border she was afraid for his life because of his political views, but that certainly was the implication and intimation. It says "Please think of a way of accomplishing your task with a minimum risk," suggesting there is some secretive operation which is to take place. It indicates "If you've already sent the first amount," thereby suggesting a sending of some currency on a previous occasion, "you can bide your time now and think of a more secure method". It refers to "the urgent needs of our comrades back home, but we can't

Admissibility of Government Exhibits

afford to be nonchalant about security either". The testimony was Mrs. San Juan said this money was in transit to [235] the Philippines to assist people. There is a reference to the embassy in Canada, and I will come back to that in a moment. There are further references to Peking Review, and addresses, and matters of this sort.

We don't claim relevance at this time, other than the fact it points out, we suggest, the source of the funds in this particular instance. Now further, there is reference here "to making the enemy more alert to your future activities, not to mention your previous ones," suggesting a covert operation.

I can't say these letters stand totally by themselves. They are too inter-related for that. If I may, I would like to point out one specific item on Exhibit Number "9" for identification, if I may.

MR. GRUBER. May I see the exhibit?

MR. O'NEILL. As I read this, in agreeing it is a subject sentence to a different occasion, it says in part, "The first amount has been received," and goes on to say "The book of poems from A.G. was brought back by our American friend". We have the use of that phrase again, and goes on "who delivered the first amount in it. A.G. must mention that the first amount together with the first amount has been received". Again, there is reference to discussing "with comrades at the embassy and it seems best not to make too frequent visits here. Therefore, I am taking the rest of the amount. A.G. will be sending a [236] comrade

Admissibility of Government Exhibits

to our place within a few,"--there is an unintelligible word which looks like "place" or maybe it is "days". We don't claim anything for that specific word, meaning a time frame, and "She is carrying non-detailed instructions about the delivery. Everything will be taken care of".

Your Honor, Exhibit "9" has on the outside "Canadian money" in pencil, and was further scratched out as to the addressee, meaning it wasn't intended to go through the mail to the Weeks Agency, Inc., Insurance-Real Estate, Storrs, Connecticut," which has been testified this is where Mrs. San Juan is from.

We think, your Honor, it is somewhat difficult to read Exhibit "3" which actually postdates it, Exhibit "13", by itself, since Exhibit "13" and Exhibit "3" clearly were sent to the same person, and we suggest that Exhibit "13" is a reference to Mrs. San Juan and her bringing the money down in this particular instance.

THE COURT. What is the date on Exhibit "13"?

MR. O'NEILL. March 5th, your Honor, and, of course, the letter of March 7th, Exhibit "3", clearly indicates that "Bryan" is a female and not a male as reference to "your husband is well-known in the United States". There is also reference, your Honor, in the letter, if I may for a moment here, of March 5th, concerning "Our friends here could not provide us big denominations," and makes reference to "We leave [237] it up to you to pick up a part, or all of the amount left there according to your convenience". There is reference again to an

Admissibility of Government Exhibits

"A.G.", and, specifically, "You will receive together with this letter to you seven envelopes which are all to be given to A.G. Please manage to deliver these to him safely and secretly," and refers to transmittal of the other letter. It makes reference to the letter to Selda, which is included within the group of letters, and that is the most important one. It indicates "Please feel free to use part of the amount you pick up there for your travel expenses. Don't forget to issue our friends there a receipt of how much you will get".

In that connection, I ask the Court to refer to another document, Item Number "5", which is a receipt that says at the top "\$77,500," and says below it, "I have received the amount of \$70,500" and "\$77,500" written in.

THE COURT. What number is that?

MR. O'NEILL. Number "5," your Honor. You may recall in one of the letters to Bryan it was indicated she could use part of the money for her travel expenses, and there is a listing of a Sheraton Hotel & Motor Inn, hotels, and various items, tax, suppers, room rate and this type of thing.

Also with these items, your Honor, Number "6" is a Holiday Inn receipt which, if we had gone further on, but not wishing to ask about the exhibit, Agent Mercier would indicate he had, at one point in time shown to Mrs. San Juan, [238] when she had been in Montreal, admitted having been there, and that, by the way, is in the name of Riverra in the amount of \$33.21 for the day before Mrs. San Juan was in Montreal. This is to say, the day following when she left from Canada, and the amount

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\$35.31 also appears on the Sheraton Hotels & Motor Inn receipt opposite for a room, thereby suggesting she was maintaining an itemized list, and the Riverra item was, in fact, hers, and for that reason it was listed in her itemization, and, in addition, Exhibits "3" and "13" were opened at the time she arrived at the port.

THE COURT. How many letters were there in total?

MR. O'NEILL. Nine.

THE COURT. Two opened, and seven unopened?

MR. O'NEILL. That is correct.

THE COURT. Do you agree that is the testimony, Mr. Gruber?

MR. GRUBER. Yes.

MR. O'NEILL. One other letter, thereafter, was opened.

THE COURT. At the time they were at the customs house, there were two unopened--two opened and seven unopened?

MR. O'NEILL. That is right. These were the two with "Bryan Abbott" on the outside.

[239] THE COURT. Let me look at "5," "7," "8," "9," "12" and "13". (Handed to the Court) Anything further, Mr. O'Neill?

MR. O'NEILL. I don't think so, your Honor, other than to state the obvious we believe those reflect on the knowledge and willfulness which we are required to prove. This suggests a clandestine operation and suggests Mrs. San

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Juan was a courier in this particular instance, and we believe it indicates quite clearly she had no intention of declaring this money in this instance and indicates why she was so upset on that particular occasion in having been apprehended.

THE COURT. Mr. Gruber, you object to the offer. Let me hear your argument.

MR. GRUBER. I have forgotten them.

THE COURT. Do you want to look at them?

MR. GRUBER. Yes. May I?

THE COURT. You may. (Handed to Mr. Gruber)

MR. GRUBER. If your Honor please, I object to all of the exhibits offered except "1" and "2", and I think, if my memory serves me, those were the bags.

THE COURT. Yes, I have already admitted those, Mr. Gruber. Do you want to tell me why you object?

MR. GRUBER. Yes. If your Honor please, I object for several reasons, and the first reason is that these matters in the offer, especially the letters, are all hearsay.

[240] As a matter of fact, I object to them further on the ground there has been no identification who the senders of the letters are. There is a name on Exhibit "3," which I don't know how to pronounce it, but in any event, it is "Sa Rebolusyon"--that appears to be the name--and under that there appears to be a penciled signature "J.B." and under that the initials "J.B."

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Similarly, with respect to Exhibit "13," the name "Sa Rebolusyon" appears and then the initials "J.B." in the same way as on Exhibit "3".

With respect to Exhibit "9," the Government, itself, says it is an exhibit. I don't know whether I am quoting correctly, but it appears to be completely confusing at the very least, and it has, as he indicated, Mr. O'Neill indicated, "The Weeks Agency, Storrs, Connecticut", an insurance company, obviously. So that aside from anything else this exhibit is totally, I claim, incomprehensible if admitted to the jury. I don't see how they could make head nor tail of this. So with respect to these exhibits, there has been no identification of the sender of these letters, if, indeed, they were sent. There has been no identification of the maker of these letters, and it seems to me that---

THE COURT. That would be virtually impossible for the Government to establish, wouldn't it, Mr. Gruber, the identity of the sender?

[241] MR. GRUBER. Well, if your Honor please, I am now referring you to the hearsay rules recently enacted; Federal Rules of Evidence in effect January 2, 1975, under "Hearsay".

THE COURT. Which rule are you referring to?

MR. GRUBER. Rule 804 where the declarant is unavailable and it defines inavailability, none of which are pertinent at this time, and then I refer you to Paragraph 5 of that subparagraph B which reads as follows: "Other

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exceptions to the hearsay rule. Where the declarant is unavailable, a statement, "--and I assume this is a statement not specifically covered by any of the foregoing exceptions, but having equivalent circumstances--" guarantees of trustworthiness," and I see no indication that these statements have any guarantee of trustworthiness as having come from---certainly, they have come from an unknown individual. What other element of trustworthiness, I don't know. If the Court determines that the statement is offered as evidence of a material fact, be the statement is more probative on the point for which it is offered than any other evidence which the proponent can procure through reasonable effort than have the general purpose of these rules, all the interests of justice will best be served by the admission of the statement into evidence.

However, a statement may not be admitted under this exception unless the proponent makes known to the adverse party sufficiently in advance of the trial, or hearing, that provide the adverse party with a fair opportunity to prepare to meet it, his intention to offer the statement which the Government has done and the particulars of it include the name and address of the declarant.

Now we don't know what the name of the declarant is at all. There are two names here. One is "Sa Rebolusyon" and the other is---

MR. O'NEILL. Mr. Gruber, perhaps I can save time. The Government is not offering those under that exception.

Admissibility of Government Exhibits

THE COURT. What are you offering them under?

MR. O'NEILL. For the most part, these documents are not hearsay. They are not offered for the truth of the matters asserted within them, and the others, specifically for example Number "9," we believe the indication from the circumstances is that this is something which Mrs. San Juan, herself, had either made or adopted.

One thing I didn't bring to the Court's attention and perhaps should have, if I could have another moment, if we take this envelope and reread it, it says "Storrs, Connecticut" on it; go to one side, we have writing down on one side it appears the reasoning is around other materials and numbers on it, and it has Montreal 715, Hartford 542. If we take a bus leaving Hartford at 5:42 and thereafter arriving [243] in Montreal at 7:15 in the evening. We will have some testimony that Mrs. San Juan told Agent Mercier she left on Friday; she left and went to get on a bus to Ottawa leaving 8:30, taking roughly three hours arriving in Ottawa at roughly 11:30. The slip from Ottawa, the Holiday Inn slip, indicates arrival, I believe it is, at 12:28 a.m. on the 29th. This would be the following day. In other words, a few hours later. We, thereafter, have the following night, the receipt there in Montreal indicating she stayed over that night. I don't know if it indicates the time, but it was some point in the afternoon.

What we suggest, your Honor, these documents are interconnected, and secondly, by taking them, Mrs. San Juan adopted them as

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her own and they being with her reflect what her knowledge and intent was with respect to her activity.

THE COURT. Well, Mr. Gruber was addressing himself only to the point of the letters at the moment.

MR. O'NEILL. We contend the letters themselves reflect an adoption by her. One, their contents; secondly, they are not offered specifically for the truth of the matters asserted, but to show her state of mind and activity was in that respect.

THE COURT. Why do you say she adopted them? Merely because they were in her possession?

MR. O'NEILL. By virtue of the contents [244] themselves would suggest "Bryan Abbott" is Mrs. San Juan, first of all, and secondly, these were the only two that were opened. One of those letters indicated "You will have with you seven other sealed letters to send," and there were seven other letters. The two addressed to "Bryan Abbott" were opened and they refer to picking up the amount Mrs. San Juan had. As to the amount, there is also a notation on Number "9" which appears to have been written after the two letters, indicating some material with respect to that amount, or to an amount.

MR. GRUBER. If your Honor please, the Government says that these documents--the letters I am referring to --are not offered for the truth of the statements contained therein. I would like to know, since obviously there are many statements in them, there are many

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statements which don't go to the question of a state of mind--which one of the statements there are. Unless he knows that, then the combination of matters that are offered in order to prove a state of mind and those that are not offered for that purpose, but contain statements of fact, is very important since, obviously, the jury is not going to be able to distinguish, nor do I think that any instruction to this effect will enable the jury to separate the fact a statement of fact and a statement of a state of mind, and it would place an impossible burden, I suggest to your Honor, on the jury.

I also call your Honor's attention to the [245] fact that even though under Rule 403 headed "Exclusion of relevant evidence on grounds of prejudice, confusion, or waste of time," and I read it, sir: "Although relevant evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence," which doesn't apply here.

THE COURT. There is nothing about Rule 403 that is new; that has been the rule forever, as far as I am concerned, but you do claim it is prejudicial in addition to the hearsay objection?

MR. GRUBER. Yes. Not only is it prejudicial, sir, but it seems to me it will prevent the jury from really focusing in on the issues here and create extraneous issues about what happened in Canada, about the Chinese Embassy, about all sorts of things like that, and

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its seems to me that if they receive these in evidence, that they cannot, without prejudice, really find a verdict here either, I might say, of guilt or acquittal.

Your Honor's reading of that will indicate to you there are many items there that will raise questions in the mind of the jury.

THE COURT. You, apparently, have less faith in the ability of the jury to sort these things out than the [246] Court has.

MR. GRUBER. I don't know whether I should comment on that, sir, but I don't have less faith. I think that, however, when you have such evidence presented to a jury, with all goodwill and with all attempts to be impartial, that these matters referred to in the letters, especially since they can't know to what point any sentence in the letters refer to a state of mind, or is this true that there was a secret, or was it in the "Embassy, or did she come from where ever she says, or who is "J.B.", or how he is connected with Mrs. San Juan.

THE COURT. Mr. Gruber and Mr. O'Neill, I am inclined to agree with Mr. Gruber there is abundance of extraneous material in these particular letters that have no bearing on the rather narrow issue in this case, and, certainly, if I admit them, I intend to advise the jury and give them a cautionary instruction they are to be considered only as to knowledge and intent involved with the offense for which Mrs. San Juan is charged in this matter.

MR. O'NEILL. We understand the Court's concern, and we agree with it. Our position is

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with respect to the materials. They are extremely relevant because they reflect this is a matter which had to be kept secret, which is why the money wasn't declared in the first place. We understand the Court's concern with the other materials, however.

[247] MR. GRUBER. Sir, on this question I am not at all clear, I admit, as to how the Government claims that these are even relevant to the state of mind. The question of the state of mind has to do with whether or not she did not sign the document 4790 on this particular day. Let us assume that she did all the things that Mr. O'Neill claims that she went to the embassy. I don't know whether he claims that, but there is mention of that there, and that this was a "secret operation". It seems to me that has no bearing on whether or not she, at the time she came to the customs house, did not sign that report. The fact that she did not sign it, the fact she refused to sign it is not proven by the fact that she was in Canada and was doing secret work. There is no evidence that the secret work was illegal; that she was doing anything illegal, and if that is so, I don't see how you connect the secrecy and the refusal to sign.

MR. O'NEILL. Your Honor, for purpose of the record, I don't think I need to go into this again, but we made it clear as snow. We filed a bill of particulars. The violation, as far as we are concerned, took place on the bus. The jury is not making a determination that she refused to sign the form.

THE COURT. To elaborate more, the Government has steadfastly insisted the violation

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took place on the bus. In what respect do you claim it took place on the bus?

[248] MR. O'Neill. We contend the violation took place on the bus at the point in time when Mrs. San Juan declined to inform the customs inspector she had material with her. She indicated she wasn't filing any type of report. She lied about what the material was. Our position is to that point in time.

THE COURT. This is the only time of the violation as far as the Government is concerned?

MR. O'NEILL. We believe there are violations when she declined to sign it inside. However, we indicated we are not charging her with doing that at this point in time. This information is intended to point to the refusal on the bus, not refusal inside. We believe she can be charged with that, however, but we are not charging her with that incident in this case.

THE COURT. Well, she declared some candy; certainly, she was under no obligation to declare the letters she was carrying.

MR. O'NEILL. I don't believe that is true. She was asked if she purchased or acquired anything outside the United States. If she did, she should say "I have some letters with me," and the inspector might have said "What are they," and she could have said "From friends".

THE COURT. That is pretty farfetched. I can't conceive somebody coming in with a letter or postcard, or [249] some minor thing like that would consider they are under an obligation to disclose they had letters in their possession. I went abroad and received letters

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from my children and brought them back to the United States and when asked to declare things, I didn't declare "Oh, yes, I have five letters my children sent to me abroad". If any rational reading of the statute requires that it does, I plead guilty to the offense.

MR. O'NEILL. We could bring in customs officers with respect to that, but that is not the issue before the Court.

THE COURT. I suppose I would be picked up. Aren't we focusing on the money?

MR. O'NEILL. Absolutely, your Honor; absolutely.

MR. GRUBER. If that is true, your Honor, it seems to me that no crime has been committed.

THE COURT. I think you are premature on that, Mr. Gruber. I am interested only in ruling on the admissibility of the offered exhibits. I would like to see "9," if I may.

MR. MURDOCH. I believe that is the Form 4790.

THE COURT. That is admitted.

MR. MURDOCH. Did you wish to see other exhibits other than "9"?

[250] THE COURT. No, just "9". (Handed to the Court) Well, it is the Court's intention at the present time to admit all of the exhibits with the exception of "9". The defendant, of course, will have an exception. The Court also intends to give a cautionary instruction these bear only on the question of knowledge and intent, and that the defendant is charged only with

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the failure to report and that the jury should keep this in mind in connection with these exhibits.

I understand, Mr. O'Neill, you are offering "9" for two different purposes, is that correct?

MR. O'NEILL. We are, basically, suggesting that the card itself suggests the information on there, together where it is from originally, suggests was made out by Mrs. San Juan, but further, in her purse---

THE COURT. It doesn't make an awful lot of sense to me. I think it would be open to speculation by the jury, and certainly on the present state of the evidence I will exclude "9". There may come a time, depending on circumstances, where you might wish to reoffer it, and if you do, of course, you may do so.

MR. O'NEILL. So I am clear, the exclusion is based on the comprehensibility of the material on the rear of it, basically?

THE COURT. Well, I would say comprehensibility and in content, and I think it would be more prejudicial than [251] probative, and I think I have in my discretion the authority to exclude it on that basis. So, "9" is excluded.

MR. GRUBER. May I, your Honor, ask that the exhibits that you have, the two letters that you have admitted be excised in such a way as to eliminate those sentences or items there that have, quite clearly, nothing to do with the question of intent or willfulness?

THE COURT. What do you say as to that, Mr. O'Neill?

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MR. O'NEILL. Your Honor, I would like to know which paragraphs Mr. Gruber is referring to, first of all.

THE COURT. Do you have intention of reading these letters now?

MR. O'NEILL. Not at this time

THE COURT. Can you do it at recess, and counsel can agree to the portions to be deleted, and in this instance, perhaps it would not be to strike them out in their entirety but cover them up in some way and offer the photostatic copies with the portions deleted, if counsel can agree. I would just as soon get going with the testimony and let counsel look at them during recess, if that is a feasible solution as far as your case is concerned, Mr. O'Neill.

MR. O'NEILL. No problem, your Honor. The only difficulty is I had planned in connection with Mr. Mercier's testimony to introduce them, and if at a point in time [252] we resolve this, if the Court can indicate these were admitted at the time of Mr. Mercier's testimony after allowing us to read them into evidence.

THE COURT. Fine. I want to keep on going, if it works out that way.

MR. O'Neill. If we can, your Honor.

THE COURT. Then can we bring in the jury at this point?

MR. O'NEILL. As far as we are concerned, your Honor.

THE COURT. All right.

(The jury entered the courtroom at 2:30 p.m.)

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MR. O'NEILL. May we approach the bench for a second?

THE COURT. Yes.

(At the bench)

MR. O'NEILL. Your Honor, I realize the Court does not anticipate indicating to the jury at this point in time a number of exhibits were admitted, specifically the letters. Could the Court indicate, however, that the two hotel slips, Numbers "6" and "7" and also Numbers "5" and "8", the Laurentian Hotel. The others, I think, were admitted.

THE COURT. Yes, I will advise the jury of that at this time.

[253] MR. GRUBER. Are you going to offer these into evidence?

THE COURT. They are admitted.

MR. GRUBER. They have been?

THE COURT. Yes.

MR. GRUBER. I see.

(End of discussion at the bench)

THE COURT. Government's Exhibits "5," "6," "7," and "8" are admitted.

(Government's Exhibits "5," "6," "7," and "8" were received in evidence.)

MR. GRUBER. Exception.

THE COURT. You don't need to. We have that in mind.

* * *

Defendant's Motion for Acquittal

**EXCERPTS FROM TRANSCRIPT
OF MARCH 9-11, 1976**

[293] THE COURT. All right, Mr. Gruber, you may make your motion.

MR. GRUBER. If it please the Court. At this time I move for acquittal on grounds, which I will go into in greater detail in a moment, that the Government has failed to establish its case beyond a reasonable doubt, and further, that the violation of which Mrs. San Juan is accused is not a violation under the statute under which she is accused; namely, Title 18--Title 31, I am sorry.

THE COURT. We will have it in mind. You don't need to make specific reference to it.

MR. GRUBER. I would like to discuss the second part of my argument first, if I may--the part I mentioned second. The Government has taken the position that the violation by Mrs. San Juan occurred on the bus. As I read the statute, the statute does not make criminal a failure to make a declaration on the bus. The statute is clear that there must be a written report filed containing certain information, all of which is outlined in the statute.

It seems to me what the Government has done in this case is to confuse the requirement of this statute under which the defendant stands informed with the requirements of the customs regulations and laws. But, even if we assume that they are proceedings--and it seems to me they are--under the customs regulations, that there is no violation even of the

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[294] customs regulations because I have been unable to find out--I have been unable to find any regulation, any customs regulation, which says that when you bring in money above a certain amount, it has to be declared.

There is a question or oral declarations as to merchandise brought in, as to material brought in, but there is none about money. Certainly, none about money over \$5,000, and, of course, the purpose of the regulations of the customs regulations is to find out whether there is contraband, or whether there are dutiable goods.

Now, somehow, the Government seems to have a theory that it is under the customs regulations that this defendant stands accused, but I see nothing in those regulations that would justify that. But, of course, your Honor knows she hasn't been charged under the customs regulations. She has been charged under the Bank Secrecy Act, and under that Act, it is no violation for her to say nothing about the money that she brought in. It is no violation even if she doesn't make a report, unless she does it willfully.

So, on that ground alone, it seems to me with the position that Mr. O'Neill took before your Honor, and as I have previously argued at other times, the position the Government has taken in its briefs and memoranda asserting that the violation occurred on the bus, I think on that ground alone [295] that the defendant is entitled to an acquittal.

The second ground that I urge upon your Honor is that the willfulness here required by the statute has not been proved beyond a reasonable doubt. The evidence that has come in to date shows clearly that Mrs. San Juan

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didn't know what to do about the report. The evidence shows that she didn't know about the reporting requirement when she came in on the bus, and the first time that she learned about the requirement was when she was advised of it in the inspectors' room. Her knowledge of the law, up until that point, was nil. Thereupon, the report was presented to her, and the evidence introduced by the Government is, I submit, conclusive that she didn't know what to do about the report. It was never explained to her.

The report, as your Honor knows, in Question 27 has certain statements in it, or certain words in it that are, obviously, nothing that a layman who knows nothing about the law can just go ahead and sign. It isn't like the regular customs declaration where you are asked what goods did you bring in, what you paid for it, and so forth. Here, she is asked whether she brought in money, brought this money in as an agent, or an attorney, or in any other capacity.

Now the testimony is that she says she didn't know who gave her the money. Now under those conditions, it seems to me she very well might say, "I don't understand this," [296] which, in effect, is what she did say; might very well say, "I want a lawyer to clarify this for me," and at the very least, "I want to talk to my husband and maybe he can help me out". I think a reading of Form 4790 itself shows that any person who is required under pains of perjury to sign such a statement would very well hesitate about what she is signing.

Now, of course, we have the issue on the issue of willfulness. What the Government

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has introduced on this issue in the form of letters. Your Honor has read the letters, has seen the letters. There is no proof that even if there was dealings between Mrs. San Juan and some people in Canada that there was anything evil in what she was doing; that there was anything wrong with what she was doing. The fact that she might not want to disclose with whom she was talking is no indication that she wasn't confused. She did not understand what she had to sign. If she understood what she had to sign, then I can understand the relationship between what happened in Canada and what happened in the inspectors' room, but she didn't understand what she had to sign. Those words are not clear, and they are not clear, I must confess, that as an attorney I am not sure what those words mean, and, incidentally, your Honor, the statute talks in slightly different language.

The statute talks about acting as a principal, or bailee, or agent. I think those are the words of the statute. [297] Now those words, and the statute says that the form has to indicate in what capacity a person brings money in. The form doesn't ask the questions in exactly that way. It says; it says "in what capacity--agent, attorney, or in any other capacity".

Now it seems to me before she can be convicted of this crime, it has to be shown first, beyond a reasonable doubt, that she brought it in as a principal, or as a bailee, or as an agent, because if the Government does not show that she brought that money in in those capacities, then I think that there must be an acquittal in this case. For that reason, I ask for such a judgment.

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THE COURT. Mr. O'Neill.

MR. O'NEILL. Your Honor, the Statute in question here, 31 United States Code, Section 1101, states in Part (b), where it is required, as does Part (a), but Part (b) indicates that the "reports required under this section shall be filed at such time and places, and may contain such of the following information, and file additional information in such form and in such detail as the secretary may require." I think the statute further states the "secretary" is the Secretary of the Treasury.

Then, your Honor, going to Title 31 of the Code of Federal Regulations, Section 103.23(a), "Each person who physically transports, mails, or ships, or causes to be [298] physically transported, mailed, or shipped, currency or other monetary instruments in an aggregate amount exceeding \$5,000 on any one occasion from the United States, out or into the United States from any place outside the United States, shall make a report thereof".

Section 103.25(b) indicates, "Reports required to be filed by Section 103.23(a) shall be filed at the time of entry into the United States, or at the time of departure"--if there was a departure--"unless otherwise directed or permitted by the Commissioner of Customs". Our focus there, your Honor, is "shall be filed at the time of entry into the United States".

Your Honor, any regulation, or statute, obviously, must be read in a common sense manner. Now we don't suggest that one who travels across the border in either a vehicle or a bus, and gets one foot inside the United States and not yet filed a report, because the

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customs house is two hundred yards up the road, committed a violation. What we suggest is that when an individual comes up to the port of entry, makes a declaration to the officer, and when they are done with that, the officer has not, in some way, indicated the presence of monetary instruments, or a desire to fill out a report, or a request for an opportunity to go inside, and in some manner make out a report, or raise some question with respect to that, they have, at that time, violated the law. [299] Otherwise, the statute would be virtually unenforceable in most respects. It would require anyone found with monetary instruments be given a report and an opportunity to complete it. It would negate the statute if one were not allowed that opportunity.

We are suggesting, on the bus, when Mrs. San Juan was asked by Mr. Johnson the questions, and when he left her, as far as she knew he was the last United States Government official she was going to deal with--he didn't say anything about coming back or going inside--she raised no questions about it, and we say at that point in time the violation was complete.

Now with respect to the aspects of willfulness on the part of Mrs. San Juan---

THE COURT. Just a minute. Mr. Gruber seems to indicate that there is no requirement of any declaration at that particular time.

MR. O'NEILL. Your Honor, there is no requirement within the statute that it be declared per se.

THE COURT. Is there a requirement that other merchandise and goods, and so forth, be declared?

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MR. O'NEILL. Your Honor, if I may quote for a moment from Section 148.11 of Title 19 of C.F.R., "All articles brought into the United States by any individual shall be declared to a customs officer at the port of first arrival in [300] the United States, or a conveyance enroute to the United States in which a customs officer is assigned for that purpose, or a pre-clearance". I think "the first place" is applicable here.

THE COURT. Which one are you reading from?

MR. O'NEILL. This is Section 148.11, your Honor, specific requirement that the items be declared.

THE COURT. Of course, the statute in question doesn't provide that the individual who might have money in their possession in the amount of \$5,000, shall declare it and file a report. It just indicates, file a report. How is that supposed to be implemented anyway, in your judgment?

MR. O'NEILL. Our judgment is you can't certainly punish an individual who, when the customs officer came up, said, "I haven't filed a report. Can I get one?"

THE COURT. Suppose a person didn't know they were supposed to file a report when they had money and just left the United States for an extended trip and ended up with about \$6,000 and had it in their wallet as they came across the border, what do you say under those circumstances?

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MR. O'NEILL. Your Honor, I think the particular circumstance would be very important. If I can elaborate on that for a moment, if the customs inspector used the phrase "Do you have anything to declare"--which is a very poor phrase as it has so many points under it--if the person, in hearing [301] the question didn't think it meant money, honestly felt in good faith it didn't mean that, he is not required to declare it per se, there is no violation even if he didn't file a report, because he honestly didn't willfully fail to file the report, but if the individual, under the term "declaration", or in this instance, purchased or acquired anything under the declaration purpose, or acquired anything, and he said, "No, nothing," knowing he had something, then we think, your Honor, he has shown a deliberate disregard for what the law might be by his conduct. He is suggesting that he realizes that his actions are illegal. It is not necessary, we submit, that the individual understand that there is a statute specifically prohibiting this. The individual may think he simply must declare it and think it is not applicable. He may not know this, but if he has an indication of what he is doing is illegal, is what we are suggesting

THE COURT. You are saying there has to be, on the part of the individual, the intent not to declare it?

MR. O'NEILL. Intent not to make it known to the customs inspector.

THE COURT. All right, make it known.

MR. O'NEILL. In some respects, if the individual honestly didn't believe he had to tell

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him about it, for some reason, I think it raises serious questions as to whether it could be a violation, because the statute says "willfully".

[302] With respect to willfulness, we submit there is more than ample evidence of willfulness here. As indicated by the lie in the declaration as to the contents of the packages, we submit, is a false attempt to make it appear that Mrs. San Juan was surprised by the money in the packages, when the evidence, thereafter, clearly indicated she was aware of it and was transporting it into the United States.

We further suggest, your Honor, that Mrs. San Juan was, in fact, the principal and agent both, and we submit under the transmittal of the envelopes this Court could find she had knowledge of the contents of those letters, or a reasonable individual could, perhaps I should say, should have knowledge of those. The letters suggest the secret method of conveyance which would lead her not to declare the money. We believe there has been no evidence whatsoever that she was unaware of the requirement of this law. The evidence strongly suggests she knew what she was doing was illegal; that she knew of the currency reporting statute.

The Government argues, under the circumstances, in all probability she did. We can't look into her mind, but as to whether or not she knew definitely, we can't say. We believe her actions indicate she knew her conduct was illegal.

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There has been a lot of testimony concerning Mrs. San Juan inside and the form. We presented that testimony, basically, for two reasons. One, to reflect upon her knowledge [303] and intent at the time she was on the bus. We believe her actions reflected this and her willingness to make it known and seek to file a report on the bus. Also, your Honor, for purposes of completeness; we didn't make it wish to appear we are hiding something. We believe the evidence clearly suggests not that Mrs. San Juan did not understand the report, she didn't want to file it. She did not wish to put in that information at no time--other than for the question of the packages on the bus--which indicates a desire not to fill it out.

She did not ask the meaning of any terms, or assistance, or anything of this nature, and we submit the Government has made out its case on the basis of what is shown here.

MR. GRUBER. May I just reply, briefly, on the question of the statute?

THE COURT. We have given counsel the opportunity to prepare their closing arguments anyway, and normally, you wouldn't get a chance to rebut the Government, but, yes, we will let you.

MR. GRUBER. May I just suggest that, as your Honor, of course, know this is the criminal statute. If Congress wanted to say that this has to be done, that there has to be an oral declaration, it could very well have done it. It did not. It said that a report has to be filed; if a report is not willfully filed, there is a violation.

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[304] Any attempt to try to analyze the congressional intent, in terms of the statute, by saying that Congress must have intended that an oral declaration has to be made on the bus, is simply not in the statute, or, as far as I can tell, in the hearings. They wanted a report. One of the reasons they wanted a report, too, is that they wanted to turn it over to the Internal Revenue Service.

What can you do about an oral declaration? You can't do anything about it, and, as a matter of fact, it can be so easily denied. Suppose Mrs. San Juan had said, "Yes, I have \$5,000," and the inspector said "She never told me that," what would be the situation at that time?

THE COURT. I don't follow you on that argument.

MR. GRUBER. Perhaps, I am not clear, but in any event what I mean is, suppose let us assume that the statute means--which it does not mean--that an oral declaration has to be filed on the bus. Suppose Mrs. San Juan, or someone else, had told the inspector, "I have \$5,000; I have more than \$5,000," and then the inspector leaves the bus. Then some issue arises as to whether or not she did not file a report, and the inspector testifies on the stand, in court, that, "No, she never told me that". So, it is an issue that could be one of impossibility of proof, unless you say that one of the people was lying, and that isn't what the statute [305] means. The reason they wanted a report is under pains of perjury. They would have your statement and not make the violation on the bus. If there is some problem

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about whether or not the revelation of money in the report or in the bus can best be accomplished by an oral declaration, Congress would have said so, but Congress, obviously, didn't want to say so.

As a matter of fact, the whole Bank Secrecy Act is a reporting statute. It is a reporting statute, as the Supreme Court has said.

THE COURT. Assuming for purposes of this discussion that Mrs. San Juan was in violation of the statute when she failed to state she had in her possession more than \$5,000, then the Court is satisfied, at this juncture, there is sufficient evidence to go, to let the question go to the jury as far as willfulness is concerned. We think there is sufficient evidence for the jury to determine that question, and, of course, they would have to determine the issue of willfulness beyond a reasonable doubt.

Now I will be perfectly frank to admit to you I have, at the present time, some difficulty with this statute, and what is actually required when somebody comes into the country, and I am going to want to consider that over the evening, and I will make my ruling in the morning on this point. I do agree with you, it is less than clear, and I guess we can't fault Congress in their wisdom for passing it in this [306] form, but I do have some reservations, and I do have some problems as far as that is concerned.

Anything further at this time, Mr. O'Neill?

MR. O'NEILL. Your Honor, if I can make a brief point. Your Honor, if we look at the situation here in this matter, "Didn't Mrs. San

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Juan file a report at the point in time when she dealt with the customs inspector on the bus, did she file a report," the answer is, "No".

THE COURT. That is too simple; that is not realistic. If she said, "I have \$5,000," and he didn't have a form to give her, he would have to go off and get one. She is not obligated to come in with a form clenched in her hand, and if she had \$5,000 it is anticipated Mr. Johnson would have to go to the customs station and bring it back, and you can't charge her with the responsibility of not having a completed form when he poses the question, can you?

MR. O'NEILL. We are not suggesting that at all. The statute says, in keeping with the regulation, "shall file a report at the time of entry".

THE COURT. I understand what the statute says, as far as that is concerned. I have some problems, Mr. O'Neill. I have to resolve them myself. Counsel have been helpful, but I will have to resolve them myself, and I will let counsel know in the morning. We have asked the jury to come back at 9:30. I will ask counsel to be here at nine o'clock [307] so we can dispose of this prior to the time we get the jury in, and I understand at the moment, Mr. Gruber, you haven't made a determination as to whether you will present additional evidence or not.

MR. GRUBER. Yes.

THE COURT. Assuming you don't, and assuming I do not rule in your favor, then we will proceed immediately to argument.

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MR. GRUBER. Very well, sir.

THE COURT. We'll stand in recess.

(Court recessed at 4:35 p.m.)

(March 11, 1976; 9:10 a.m. in the courtroom
without the jury.)

THE COURT. The Court has given considerable thought to defendant's motion for acquittal, and as I indicated last night, I consider it a close question. But, I am satisfied upon reflection that the defendant's failure to advise the customs officer, on the bus, that she was carrying currency in excess of \$5,000, from the fact the jury could determine beyond a reasonable doubt that the defendant had the requisite intent not to file the required report, and this being the case, the Court now denies the motion for that reason and additional reasons discussed last evening.

Now, Mr. Gruber, have you decided whether or not you are going to put in any evidence?

Defendant's Requests to Charge

REQUEST NO. 3

In order to find the Defendant guilty of the charge as set forth in the information, the Government must establish each of the following elements beyond a reasonable doubt: 1) that the Defendant as principal, agent, or bailee; 2) knowingly; 3) transported; 4) monetary instruments; 5) exceeding \$5,000; 6) from any place outside the United States into the United States; 7) and willfully failed to file a written report containing the following information:

a) The legal capacity in which the person filing the report is acting with respect to the monetary instruments transported;

b) The origin, destination, and route of the transportation;

c) Where the monetary instruments are not legally and beneficially owned by the person transporting the same, or are transported for any purpose other than the use in his own behalf of the person transporting the same, the identities of the person from whom the monetary instruments are received, or to whom they are to be delivered, or both;

d) The amounts and types of monetary instruments transported

I charge you that if you find that the Defendant was not a principal, agent, or bailee, beyond a reasonable doubt, then you must acquit her. I further charge you that if you find that she was not transporting the money at the time she was asked to sign Form 4790 by the Government agents, as I will define the word "transport", then you must acquit the Defendant of the charge against her.

"Transport" means to carry or convey or to carry

Defendent's Request to Charge

from one place to another. If you find from the evidence that the money was seized from her or from her control in the Custom house, that from that point on she did not transport any money or monetary instruments, then you must find the Defendant not guilty because she was not, under the statute and regulations, required to file a report.

Defendant's Request to Charge

REQUEST NO. 6

WILLFULLNESS

One of the essential elements of the offense charged is that the Defendant willfully failed to file a particular written report. I instruct you that willful failure is one which is voluntary, purposeful, deliberate, and intentional, as opposed to one which is accidental, inadvertent, or careless, and in short the element of willfullness as used in this statute involves a specific wrongful intent; namely, actual knowledge of the existence of a legal obligation and the evil motive to evade that obligation, and if you cannot find that, anything less would be considered to be either a mistake or inadvertence, or carelessness. *U.S. v Murdock*, 290 U.S. 389 (1933); *U.S. v Platt*, 435 F.2d, 789 (2nd Cir., 1970); *U.S. v Bishop*, 412 U.S. 346 (1973). Unless you find beyond a reasonable doubt that the Defendant acted willfully as I have just charged you, then you must acquit her.

District Court Charge to Jury

TRANSCRIPT OF HEARING OF MARCH 9-11, 1976

* * *

[347] THE COURT. We'll proceed to charge the jury.

DEPUTY CLERK CURRAN. The Crier will make proclamation for strict silence while the Court delivers the charge to the jury.

(The proclamation was duly given by Law Clerk Spencer Knapp.)

THE COURT. Ladies and gentlemen. I am going to appoint Mrs. Audette as your foreman, forelady, or foreperson.

* * *

This case is a criminal proceeding brought by the United States against Delia Aguilar San Juan, the defendant. The Government commenced this proceeding by an information which charges that on or about March 30, 1975, the defendant, at Highgate Springs, Vermont, did unlawfully, willfully and knowingly transport and cause to be transported into the District of Vermont, from Canada, monetary instruments in the approximate amount of \$77,500 and did willfully fail to file a report in accordance with Title 31, United States Code, Section 1101(b); in violation of Title 31, United States Code, Sections 1058 and 1101(a) and Title 31, Code of Federal Regulations, [348] Sections 103.23(a) and 103.25(b).

Your verdict should not be influenced by the fact that the defendant was charged with this offense by an information filed by the United States Attorney. An information is merely a formal procedural method of accusing the defendant of a crime preliminary to trial. Therefore, the information is not evidence of any kind against the defendant, and does not create any presumption or permit any inference of the defendant's guilt.

Charge to Jury

The defendant has pleaded not guilty to the charge in the information. You have been chosen and sworn as jurors in this case to determine the issues of fact presented by the allegations of the information and the denial made by the not guilty plea of the defendant. You are to perform this duty without bias or prejudice to any party.

You have observed that the defendant did not take the stand to testify in her own behalf. She had a constitutional right not to do so. One of the highest constitutional safeguards in our system of criminal justice is that a defendant is not obliged to testify or to produce evidence in her own behalf, and she may not be called as a witness by the prosecution or compelled to give evidence against herself. The exercise by a defendant of her right not to testify raises no presumption of guilt and permits no unfavorable inference of any kind to be drawn. In determining the defendant's guilt [349] or innocence of a crime charged, you are not to consider in any manner whatsoever, the failure of the defendant to testify as a witness or to produce evidence in her own behalf.

The law presumes a defendant to be innocent of a crime with which she is charged. This presumption of innocence continues throughout the trial down to the time in the jury room, if that time does arrive, when you are satisfied from all the evidence, beyond a reasonable doubt, that the defendant is guilty of the crime charged. The law permits nothing but legal evidence presented before this jury to be considered in support of the charge against the accused. So, the presumption of innocence alone is sufficient to acquit the defendant, unless you are satisfied beyond a reasonable doubt of the guilt of the defendant from all of the evidence in the case.

You have seen and heard the evidence produced in this trial, and it is the sole province of the jury to determine the facts of this case. But first, I would like to

Charge to Jury

call to your attention certain guides by which you are to evaluate the evidence.

The burden of proof is on the Government to prove each element of the charges against the defendant beyond a reasonable doubt. You cannot find the defendant guilty unless you determine that the Government has established, by the evidence, each and every essential element of the crime charged against her beyond a reasonable doubt. However, to support a [350] verdict of guilty, you need not find every fact beyond a reasonable doubt. You need only find that the crime charged has been proven beyond a reasonable doubt from all of the evidence in the case.

A reasonable doubt is a fair doubt based upon reason and common sense and arising from the state of the evidence. By proof beyond a reasonable doubt, you are not to understand that all doubt is to be excluded. It is rarely possible to prove anything to an absolute certainty. A reasonable doubt means substantial doubt such as would make an honest and sensible and fair-minded person hesitate to act in a serious and important matter wherein ascertainment of the truth was conscientiously being sought.

A reasonable doubt may arise not only from the evidence produced, but from a lack of evidence. I stress to you again that the law never imposes upon a defendant in a criminal case the burden or duty of producing any evidence and, since the burden is always upon the Government to prove the accused guilty by proving beyond a reasonable doubt every essential element of the crime charged, the defendant has the right to rely upon a failure of the prosecution to establish such proof. The defendant may also rely upon evidence brought out on cross examination of witnesses for the Government.

If, after impartial consideration of all the evidence,

Charge to Jury

you can candidly say that you are not satisfied of [351] the guilt of the defendant beyond a reasonable doubt, you should find the defendant not guilty. Conversely, if you are satisfied of her guilt beyond a reasonable doubt, you should find the defendant guilty.

There are two types of evidence which a jury may consider in determining whether or not the defendant is guilty as charged. One is direct evidence, such as the testimony of an eye witness. The other is circumstantial evidence, which consists of proof of a chain of circumstances from which a conclusion regarding essential facts in the case may logically be drawn. Regardless of the nature of the evidence, the law requires that before convicting the defendant, the jury must be satisfied of the defendant's guilt beyond a reasonable doubt from all of the evidence in the case. On the other hand, if all of the evidence in the case satisfies you beyond a reasonable doubt of the defendant's guilt, you should find her guilty.

Circumstantial evidence is legal and proper for you to consider, and you may convict the defendant upon this class of evidence alone if you are persuaded beyond a reasonable doubt of her guilt to do so. However, the circumstances must be such as will lead the guarded discretion of a just and reasonable man to the conclusion that the crime charged has been committed and that the defendant is guilty of its commission.

Any testimony which has been excluded or [352] which has been stricken from the record is not evidence in the case, and you will entirely disregard it in arriving at your verdict. Likewise, the arguments of the attorneys and any statements which they made in their arguments are not evidence and will not be considered as evidence by you. You will render your verdict only from the evidence in the case which consists of the sworn testimony of the witnesses and all

Charge to Jury

exhibits which have been received in evidence. It is your recollection of the witnesses' testimony and not the attorneys' statements as to what that testimony was which shall control you in reaching your decision. But, in your consideration of the evidence, you are not limited to the bald statements of the witnesses. On the contrary, you are permitted to draw, from facts which have been proved, such reasonable inferences as are justified in the light of your own experience.

If you feel that witnesses differed as to what the facts were, it is generally better to reconcile the conflicting testimony, if you reasonably can, upon the theory that all of the witnesses intended to tell the truth; but if you cannot so reconcile the testimony, then you must determine, from all the evidence before you, which of the witnesses is entitled to the greater credit.

The credibility of the witnesses and the weight to be given their testimony are questions entirely for your determination. The law is that you are not bound to give [353] the same weight, the same credit, or have the same faith in the testimony of each witness, but you should give their testimony just such weight, just such credit, and have just such faith in it that you think it is fairly entitled to receive. Consider the appearance of the witnesses on the stand; their candor or lack of candor; their feelings or bias, if any; their interest in the result of the trial, and the reasonableness of the testimony they gave. You should believe as much or as little of the testimony of each witness as you think is proper.

If you find that any of the witnesses in this action who are not parties made statements outside of court inconsistent with their testimony in court as to the facts involved in this case, you may consider these inconsistent statements only for the purpose of

Charge to Jury

impeachment of the witness, or evaluating his, or her, credibility and not for the purpose of showing the same to be true.

The information in this case charges a violation of 31 United States Code, Sections 1101(a) and 1058, and 31 Code of Federal Regulations, Section 103.23(a) and 103.25(b). Section 1101(a) of Title 31 of the United States Code provides in pertinent part that whoever knowingly transports or causes to be transported monetary instruments to any place within the United States from or through any place outside the United States in an amount exceeding \$5,000 on any one [354] occasion shall file a report in accordance with Subsection (b) of Section 1101. Subsection (b) of Section 1101 provides that the reports required to be filed by Subsection (a) shall be filed at such times and places, and may contain such information, in such form, and in such detail as the Secretary of the Treasury may require.

Sections 103.23(a) and 103.25(b) of Title 31 of the Code of Federal Regulations are regulations promulgated by the Secretary of the Treasury. Section 103.23(a) provides in relevant part as follows: Each person who physically transports or causes to be physically transported, currency or other monetary instruments in an aggregate amount exceeding \$5,000 on any one occasion into the United States from any place outside the United States, shall make a report thereof.

Section 103.25(b) of Title 31 of the Code of Federal Regulations provides in relevant part as follows: Reports required to be filed by Section 103.25(a) shall be filed at the time of entry into the United States unless otherwise directed or permitted by the Commissioner of Customs. They shall be filed with the customs officer in charge of any customs port of entry or

Charge to Jury

departure, or as otherwise permitted or directed by the Commissioner of Customs. They shall be on forms to be prescribed by the Secretary of the Treasury and all information called for in such forms shall be furnished.

The form prescribed by the Secretary of the [355] Treasury for the filing of the reports required by the statutes and regulations, which I have just referred to, is Form 4790 of the Internal Revenue Service of the Treasury Department. A copy of Form 4790 has been admitted as an exhibit in evidence in this case.

Section 1058 of Title 31 of the United States Code provides that whoever willfully violates any of the statutory provisions or regulations, which I have just referred to, shall be guilty of an offense against the United States.

In this regard, I would remind you that the defendant is not charged with the offense of transporting monetary instruments, but rather is charged with the failure to report on a form available for that purpose the transportation of monetary instruments in excess of \$5,000 into the United States from a place outside of the United States. That is the only offense with which she is charged and it is the only one which you should consider in your deliberations.

For purposes of this case, the term "monetary instruments," as used in the statutes and regulations, means coins and currency of the United States.

There are three essential elements that the Government must prove beyond a reasonable doubt in order to establish the offense charged in the information. Those elements are as follows:

Charge to Jury

[356] First; that on or about the 30th day of March, 1975, Delia Aguilar San Juan, the defendant, transported or caused to be transported into the United States, from Canada, monetary instruments in an amount in excess of \$5,000.

Second; that the defendant failed to file a report of the transportation as required by the pertinent statute and regulations.

Third; that the defendant acted knowingly and willfully.

With respect to the first element of the offense, the Government is required to prove beyond a reasonable doubt that the defendant transported, or caused to be transported, monetary instruments in an amount in excess of \$5,000 into the United States from Canada on or about March 30, 1975. It is not necessary for the Government to prove that the defendant herself actually placed the money in her luggage. It is sufficient to prove only that she carried or conveyed the luggage containing the money. Also, although the Government has alleged that the defendant was transporting currency in the amount of \$77,500, the Government need not prove that exact amount. It must prove only that the amount of currency being transported exceeded \$5,000.

With respect to the second element of the offense, the Government must prove beyond a reasonable doubt that the defendant failed to file a report of the transporta-[357]tion of monetary instruments as required by 31 United States Code, Section 1101 and 31 Code of Federal Regulations, Sections 103.23(a) and 103.25(b).

Charge to Jury

As I have already indicated to you, the report which is required to be filed in connection with the transportation of currency into the United States is Form 4790 of the Internal Revenue Service. Persons transporting more than \$5,000 into the United States are required to file Form 4790 with the customs officer in charge at any customs port of entry at the time of entry into the United States unless otherwise directed or permitted by the Commissioner of Customs.

In this case, the time of entry into the United States was the time that Mrs. San Juan arrived in the United States, from Canada, at the customs port of entry at Highgate Springs, Vermont on March 30, 1975.

In order to establish the second element of the offense charged in the information, the Government must prove beyond a reasonable doubt that the defendant failed to complete and return Form 4790 to the customs officer in charge at the time she entered the United States through the port of entry at Highgate Springs, Vermont on March 30, 1975, and the Government must also prove beyond a reasonable doubt that the Commissioner of Customs did not direct or permit the defendant to use any method of filing Form 4790 other than completing it and submitting it to the customs officer in charge of the port [358] of entry at the time of entry.

In connection with the second element you will remember that defendant's counsel conceded in his opening statement that his client, in fact, did not file the report. You will also recall that the attorney for the United States, in

Charge to Jury

his opening statement, advised that it is the Government's contention that the violation with which the defendant is charged occurred on the bus when she arrived in this country. In this regard, there was testimony that when questioned on the bus by a customs officer, the defendant failed to state or advise him that she was carrying a large amount of currency or monetary instruments as they are referred to in the statute. This testimony, if believed by you, standing alone does not constitute proof of the offense charged, as the statute and regulations do not require oral statements or declarations. The testimony may, therefore, be considered by you as bearing only upon the defendant's knowledge or intention in failing to file a written report of the currency as charged.

The last element which the Government must prove beyond a reasonable doubt is that the defendant acted knowingly in transporting or causing the transportation of the monetary instruments, and that she acted willfully in failing to file the required report.

An act is done knowingly if it is done voluntarily and purposefully and not because of mistake, accident, [359] mere negligence, or other innocent reason. In this case, in order to find that the defendant acted knowingly in transporting the currency in her suitcase, you must find that she knew the currency was contained in her suitcase, and that she carried the currency voluntarily and purposely, not accidentally or ignorantly.

You must also find that the defendant acted willfully in failing to file a report of the currency she was transporting. An act is willfully

Charge to Jury

done, if it is done knowingly and deliberately. A failure to act is done willfully, if it done voluntarily and intentionally and with specific intent to fail to do something the law requires. In this case, in order to find the defendant guilty of willful failure to file the required report, you must find that she knew that the report was required to be filed, and she intentionally and deliberately failed to comply with that requirement, or acted in deliberate disregard of the requirement.

In this regard, it is not necessary for the Government to prove that the defendant knew that the law imposed a duty upon her to file a report of her transportation of currency. Unless and until outweighed by evidence in the case to the contrary, there is a presumption that every person knows what the law requires to be done. However, evidence that the defendant acted or failed to act because she was ignorant of the law may be considered by you in determining whether or not [360] she acted, or failed to act, with specific intent to disobey the reporting requirement, as charged.

At this time, I want to remind you that two letters denoted Government's Exhibits "3" and "13" have been admitted into evidence, but these are to be considered by you as bearing only upon the question of the defendant's knowledge or intent, and for no other purpose. They have not been admitted for the truth of the matters contained therein, nor solely by themselves do they permit any evidence of wrongdoing on the defendant's part. As stated, however, you may give them such weight which you feel they are entitled on the

Charge to Jury

question of the defendant's knowledge or intent with reference to the offense with which she is charged in this matter.

Again, I want to suggest to you that while the law is for the Court, and you are to apply the law as given you in these instructions, the finding of the facts in this case is entirely for you. Whatever reference the Court has made to the evidence, or pleadings, is only for the purpose of making application of the principles of law to the issues in this case and without any purpose of indicating in the least degree how the Court may think that the case ought to be decided on the facts. That is for you, and you alone, to determine.

The exhibits which have been admitted into evidence during the trial are for your consideration in your [361] deliberations.

Your verdict must be unanimous and will be delivered orally by your foreman, or forelady, in response to inquiries made by the Clerk.

UNITED STATES DISTRICT COURT
DISTRICT OF VERMONT

UNITED STATES OF AMERICA

v.

DELIA AGUILAR SAN JUAN

} Criminal No. 75-46

MOTION FOR JUDGMENT OF ACQUITTAL
NOTWITHSTANDING THE VERDICT

Defendant moves the court to set aside the verdict of guilty returned in the above entitled action on March 11, 1976 and to enter judgment of acquittal. In support thereof the defendant submits her Memorandum under separate cover.

United States of America vs.

**United States District Court for
DISTRICT OF VERMONT**

DEFENDANT

Delia Aguilar San Juan

DOCKET NO. 75-46

JUDGMENT AND PROBATION/COMMITMENT ORDER

AO 245 (6/74)

In the presence of the attorney for the government
the defendant appeared in person on this date

MONTH DAY YEAR
6 21 76

COUNSEL

☐ WITHOUT COUNSEL

However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

☒ WITH COUNSEL

Samuel Gruber, Esq. and James Murdoch, Esq.

(Name of counsel)

PLEA

☐ GUILTY, and the court being satisfied that
there is a factual basis for the plea,

☐ NOLO CONTENDERE,

☒ NOT GUILTY

FINDING &
JUDGMENT

There being a finding/verdict of { ☐ NOT GUILTY. Defendant is discharged
☒ GUILTY.

Defendant has been convicted as charged of the offense(s) of **violation of Sections 1058 and
1101(a), of Title 31, United States Code.**

SENTENCE
OR
PROBATION
ORDER

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of **one** year. Execution of sentence is suspended with the exception of thirty days to be served in a jail type institution (Court recommends that sentence be served at the Connecticut Correctional Center in Niantic, Connecticut). Defendant is placed on probation for a period of three years.

SPECIAL
CONDITIONS
OF
PROBATION

Defendant to surrender herself to the U. S. Marshal's office in Connecticut within two weeks from today.

(Sentence is stayed pending determination upon appeal)

**ADDITIONAL
CONDITIONS
OF
PROBATION**

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

**COMMITMENT
RECOMMEN-
DATION**

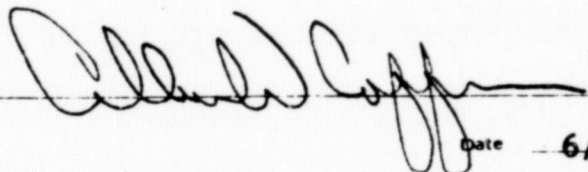
The court orders commitment to the custody of the Attorney General and recommends.

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

SIGNED BY

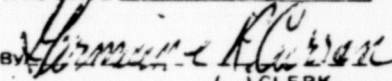
☒ U.S. District Judge

☐ U.S. Magistrate


Date 6/21/76

CERTIFIED AS A TRUE COPY ON
Filed

THIS DATE June 21, 1976

BY 
() CLERK
(X) DEPUTY

A.108

UNITED STATES DISTRICT COURT

UNITED STATES OF AMERICA
v.
DELIA AGUILAR SAN JUAN

Docket Number 75-46

Albert W. Coffrin, D.J.
(District Court Judge)

NOTICE OF APPEAL

Notice is hereby given that Delia Aguilar San Juan appeals to the United States Court of Appeals for the Second Circuit from the x judgment x order other (specify) sentence entered in this action on June 21, 1976. (Date)

Date June 21, 1976
To:

James W. Murdoch, Esq.
(Counsel for Appellant)

Address 131 Main St., Burlington, VT 05401
302-364-9811

Samuel Gruber, Esq.
218 Bedford St.
Stamford, CT 06902

Phone Number 203-322-7789
Co-Counsel for Appellant